CANADA

ROYAL CANADIAN MOUNTED POLICE

PUBLIC COMPLAINTS COMMISSION

Royal Canadian Mounted Police Act

Part VII
Subsection 45.46(3)

Chairman's Final Report after a Public Hearing

Complainants: Michael Cooper
Steven Cooper

June 26, 1992

File Nos.: 2000-PCC-89557
2000-PCC-89558

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CHAIRMAN'S FINAL REPORT

I. INTRODUCTION

1. The Process

Part VII of the Royal Canadian Mounted Police Act states that any member of the public may make a complaint concerning the conduct of any member of the RCMP (the "Force") or other person employed under the authority of the Act if this conduct is associated with the performance of any duty or function under the Act. The RCMP has the initial responsibility for investigating the complaint and responding to it. When a complainant is not satisfied with the disposition of the complaint by the Force, he may refer it to the Commission for review. Upon review of the complaint, if the Commission Chairman is not satisfied with the manner in which the Force disposed of the complaint or considers that further inquiry is warranted, he may, among other things, institute a hearing to inquire into the complaint. In this case, the Chairman must assign the member or members of the Commission (the Commission Panel) to conduct the hearing and send a notice in writing of the decision to institute a hearing to the Solicitor General of Canada, the Commissioner of the RCMP, the RCMP member(s) whose conduct is the subject-matter of the complaint and the complainant. One of the members assigned to the Commission Panel must be the Commission member appointed for the contracting province in which the incident occurred.

Part VII of the Act further states that hearings are to be public. During this hearing, the complainant, the person who is the subject-matter of the complaint, and the RCMP, through its appropriate officer, have the right to be heard either in person or through counsel. They are entitled to present evidence, cross-examine witnesses and make representations. Any person who convinces the Commission Panel that he or she has a substantial and direct interest in the complaint also has the same rights.

On completion of the hearing, the Commission Panel must send to the Solicitor General and the Commissioner a report in writing setting out such findings and recommendations with respect to the complaint as it sees fit. While this is an interim report according to the Act, the Commission feels that it must be accessible to all parties and to the public.

The RCMP Commissioner must subsequently review the complaint in light of the findings and recommendations set out in the report.

After reviewing the complaint, the Commissioner must notify the Solicitor General and the Commission Chairman in writing of any further action that has been or will be taken with respect to the complaint. Where the Commissioner decides not to act on any findings or recommendations set out in the report, he must include in the notice the reasons for not so acting. After considering this notice, the Commission Chairman prepares and sends to the Minister, the Commissioner and the parties a final report in writing setting out such findings and recommendations with respect to the complaint as he sees fit. Like the report of the Commission Panel, this report is accessible to the public.

2. Background of the Final Report

The complainants, Michael and Steven Cooper are father and son. Their complaints arose out of events that occurred in the early morning hours of May 27, 1989. Both complainants filed separate complaints that pertain to different aspects of the events that occurred on that date.

The complaints were filed in the Colwood, B.C. Detachment on June 1, 1989. The RCMP conducted its investigation and provided, as required by section 45.4 of the Act, a report dated September 13, 1989 to both complainants.

On November 15, 1989, the Commission received two letters from each of the complainants expressing dissatisfaction with the RCMP's investigation and disposition of their complaints, and requesting a review in accordance with subsection 45.41(1) of the Act.

The Chairman reviewed each complaint and, after conducting further investigation, decided, pursuant to paragraph 45.42(3)(c) of the Act, to institute a hearing to inquire into these complaints. The Commission Panel was composed of Lyman R. Robinson, Q.C., as Chairman, Rosemary A. Trehearne and Kenneth Stevenson, Q.C. The hearing was held on July 15 to 18, 1991 in Victoria, British Columbia.

The parties to the hearing were: the complainants, Michael and Steven Cooper; the RCMP members whose conduct was the subject-matter of the complaints, Constables D.A. Orthner and W.S. Leach, Auxiliary Constable D.W. Witmer and Corporal R.W. German; and the RCMP, through its appropriate officer. The Commission Panel report, dated November 18, 1991, was submitted to the Solicitor General of Canada and the RCMP Commissioner. On January 30, 1992, the RCMP Commissioner sent the Solicitor General of Canada and the Commission Chairman his written notice regarding the Commission's report, in which he indicated the additional action that would or should be taken with respect to the complaint.

This report is the Chairman's final report, required under Part VII of the Royal Canadian Mounted Police Act. Appendix A is a copy of the report of the Commission which conducted the hearing; Appendix B is a copy of the Commissioner's notice, dated January 30, 1992.

II. COMMENTS AND CONCLUSIONS ON THE COMMISSIONER'S NOTICE

Below are the Commissioner's comments on the findings and recommendations of the Commission. For greater clarity, each paragraph or group of paragraphs contained in the notice has been commented on.

> Second paragraph
>
> I note the Commission [Panel] received a great deal of evidence concerning the carotid control technique and as a consequence made a number of findings and recommendations relating to RCMP policies, procedures and training programs. In accordance with subsection 5(1) of the RCMP Act, the Commissioner of the RCMP, under direction of the Minister, has the control and management of the Force and all matters connected therewith. Therefore, I will take these findings and recommendations under advisement. They will be examined and reviewed as an internal matter by policy sections of the various RCMP Directorates. The results will then be forwarded to the Minister in my annual Accountability Report.

In his notice, the Commissioner has not referred specifically to Recommendations 5, 6 and 7. It has been confirmed to me orally, by the RCMP, that these recommendations are covered by the remarks of the Commissioner contained in his notice at paragraph two of the first page of his notice. Therefore, I have considered the remarks of the Commissioner having in mind that they are related to Recommendations 5, 6 and 7.

The facts related to the remarks of the Commissioner are described at pages 16 to 39 of the Commission hearing report. These facts would seem to warrant the Commission Panel's findings and recommendations on RCMP policies, procedures and training with respect to the carotid control technique. Obviously, the facts must be related to the subject-matter of the complaint. In the case at hand, there is an allegation that the carotid control technique was incorrectly used on Michael Cooper, and I am of the view that the findings and recommendations are related to the resolution of the complaint.

> Third paragraph
>
> In respect of Findings (B) and (F), they are viewed as observations rather than findings. Findings (A), (C), (D) and (E), along with Recommendations (1), (2), (3) and (4), are not directly related to the resolution of the complaint and, as a result, I take them under advisement. I will instruct the Director of Training to examine and review them as an internal matter.

Findings (B) and (F) read the same way:

> The use of the carotid control technique is a preferable alternative to the use of a firearm or a blow to the head by a baton or similar object.

With respect to Findings (B) and (F), I do not question the Commissioner's remarks. They could be viewed as observations.

Regarding Findings (A), (C), (D) and (E), along with Recommendations 1, 2, 3, and 4, the Commissioner indicates that they are not directly related to the resolution of the complaints and as a result he has taken them under advisement. He will instruct the Director of Training to examine and review them as an internal matter.

The Commission Panel, in its analysis of the evidence, has concluded that these findings and recommendations were related to the resolution of the complaint. I must say that, in my view, each of the findings and recommendations above has some connection to the resolution of the complaint and I wish to reiterate them.

Fourth to eighth paragraphs

I share your finding (G), that based on the evidence presented, there is no proof that reflects adversely upon the conduct of Cpl. R.W. German and Cst. D.A. Orthner with respect to matters related to the complaints by Michael and Steven Cooper.

With regards to complaint allegations of Michael Cooper, I accept findings (H), (I), (J), (K) and (L) in that the findings do not contradict the evidence presented at the Hearing. I accept Recommendation #8 (a) and (b) and will instruct the Commanding Officer, "E" Division to write to Michael Cooper explaining that reasonable justification did not exist for the application of the carotid hold to him and express regret on behalf of the Force. Michael Cooper will also be advised that the Director of Training will be reviewing and examining RCMP policies and training programs relating to the carotid control technique.

I accept finding (M). There is no credible evidence to support the allegation that a member placed a boot on Michael Cooper's neck. I note that at the time when this aspect of the complaint allegedly took place, all four of the members were fully occupied in trying to subdue Steven Cooper.

With regards to the allegations in the complaint of Steven Cooper, I share your findings (N), (M), (O), (P), (Q) and (R), that based on testimony by

> Dr. Peter I. Beliveau of the Victoria General Hospital and the evidence presented by the four members, the injuries to Steven Cooper's cheek, arms and back are consistent with the use of force. I also agree that the use of force did not exceed that which was necessary to effect the arrest of Steven Cooper.
>
> With respect to the allegation that after Steven Cooper had been subdued and placed in handcuffs, Cst. W.S. Leach grasped him by the throat and hair, I accept findings (S), (T) and (U). I, therefore, accept Recommendations #9 and #10 and I will instruct the Commanding Officer, "E" Division to extend a written apology to Steven Cooper and inform him that RCMP policies do not condone such behaviour. In addition, Cst. Leach will be encouraged to write a letter of apology to Steven Cooper, however, this must be left to his discretion as an ordered apology is meaningless.

The above paragraphs referred to Findings (G) to (U) inclusively and Recommendations 8 (a) and (b), 9 and 10. I am satisfied with the Commissioner's positive response to these findings and recommendations.

> Ninth paragraph
>
> I note the conduct of internal investigations, the production of evidence and evidential matters are addressed, resulting in Recommendations #11, #12, #13 and #14. I take these recommendations under advisement. In this regard, I will instruct the Director of Personnel to review and examine them internally.

It is recommended in Recommendation No. 11 that internal investigations, where possible, be conducted by an officer from another detachment. Similar recommendations have been made in the past and the Commissioner generally agreed.

I acknowledge that this recommendation is more appropriate for small detachments than large ones such as Surrey, Burnaby, etc., where an investigator can be selected who has no working relationship with the member against whom the complaint was made, a situation which is difficult to find in small detachments. The Cooper complaint is against members of Colwood Detachment which has a complement of 36 members and could be considered a large detachment.

Regarding Recommendation No. 12, in a number of other complaints in the past, the Commission has been contacted by several complainants advising that they had not been communicated with by the investigators. These contacts by complainants were made mostly in relation to the review of complaints by the Commission. I am of the view that the complainant should be communicated with in all investigations and provided with the opportunity of giving a full statement describing the events leading to the complaint, unless there are special reasons not to do so. I wish to reiterate Recommendation No. 12.

With respect to Recommendation No. 13, the relevant comments of the Commission Panel can be found at page 50 of the Commission Panel report and deal with the production of notes of the officers concerned.

In this case the ad hoc counsel to the Commission had asked that the notes of all officers be provided. Constable Leach's notes had not been provided. They should have been as notes are usually made immediately after the incident and are most valuable as evidence at the hearing or for the review of a complaint from a dissatisfied complainant. Recommendation No. 13 reads as follows:

> Whenever a complaint has been filed with the Public Complaints Commission, copies of the notebooks of all of the officers who have been involved with the subject-matter of the complaint shall be produced to the Public Complaints Commission.

Complaints made to the Commission in the first instance are sent to the Commissioner for investigation. At that point, the notes of the members are not required by the Commission, unless the Chairman has used his power to investigate the complaint in the public interest. The members' notes should always be part of the investigation and included with the investigation report. Therefore, when the Commissioner is asked to forward materials under the control of the Force as are relevant to the complaint, either for a review, a hearing or an investigation by the Chairman, the notes of the members would be included.

Therefore, it seems that Recommendation No. 13 could be modified as follows:

> Notes of all officers should always be part of the materials under the control of the Force as are relevant to the complaint.

I wish to reiterate Recommendation No. 13 of the Commission Panel, as modified.

With respect to Recommendation No. 14, it follows findings made at pages 50 to 52.

Briefly, evidence was led that Constable Leach, a party in Cooper's complaint, obtained a CPIC computer report with respect to Michael Cooper. (The acronym CPIC stands for Canadian Police Information Centre.) The CPIC report was obtained by Constable Leach after the complaint had been lodged against him by Michael Cooper. He obtained it while he was off duty for the purpose of using it in the hearing into Michael Cooper's complaint. The Commission Panel found that to be improper.

A similar recommendation was made in the case on File No. 2000-PCC-89135, RCMP File No. 89G-0714. A police officer who had been involved in an automobile accident while off duty was later a party in a resulting civil suit for damages. In preparation for his case he obtained access to some documents which were not available to the other person involved in the accident. The Commission made a finding that this was incorrect; the Force agreed. In his notice to the Acting Chairman and the Solicitor General with respect to the above case, the Commissioner's response was:

> In regards to recommendation 3, I will ask the Director of Informatics to examine the current policy to ensure that there is no confusion as to the restrictions which apply to access to RCMP files and the principles which govern such access.

I wish to reiterate the Commission Panel Recommendation No. 14.

The Commissioner questioned the scope the Commission Panel has to formulate findings and recommendations. I do not share the view of the Commissioner as I feel the findings and recommendations made by the Commission Panel all have some direct relation to the resolution of the complaints. In reiterating these recommendations, I do not question the responsibility of the Commissioner for the management of the Force. I accept that decisions in these matters rest with the Commissioner.

In closing, I wish to say that I do not take lightly the comments of the Commissioner about findings and recommendations that the Commissioner views as not directly related to the complaint. In each case, the Commissioner has indicated that the findings or recommendations will be referred to the relevant policy centre to be examined and reviewed. Some of the results will be forwarded to the Minister in the Commissioner's annual accountability report. The Commissioner indicated that he would be taking action in all matters addressed in his notice. Furthermore, the Commissioner said that he will personally monitor their ultimate resolution.

This is a major commitment made by the Commissioner and I am certain that an adequate review will be made of the issues that have been raised resulting in appropriate policies, procedures, etc. I wish to acknowledge the positive aspect of the Commissioner's response.

Chairman

June 26, 1992

Mr. J.B. Giroux
Chairman
RCMP Public Complaints Commission
P.O. Box 3423, Station D
Ottawa, Ontario K1P 6L4

ROYAL CANADIAN MOUNTED POLICE

PUBLIC COMPLAINTS COMMISSION

Royal Canadian Mounted Police Act

Part VII
Subsection 45.45(14)

Public Hearing
Into the Complaints of
Michael Cooper
Steven Cooper

COMMISSION REPORT

COMMISSION PANEL:
Lyman R. Robinson, Q.C.
Rosemary A. Trehearne
Kenneth Stevenson, Q.C.

PLACE AND DATES OF HEARING:
Victoria, British Columbia
July 15-18, 1991

LETTER OF TRANSMITTAL

November 18, 1991

TO: The Honourable Douglas Lewis, Q.C.
Solicitor General of Canada

TO: Commissioner Norman Inkster
Royal Canadian Mounted Police

The undersigned were appointed by Dr. Richard Gosse, Q.C., Chairman, Royal Canadian Mounted Police Public Complaints Commission, pursuant to the authority invested in him under Part VII of the Royal Canadian Mounted Police Act, to conduct a public hearing to inquire into complaints by Michael Cooper and Steven Cooper in respect of certain events that occurred at Langford, British Columbia on May 27, 1989.

We have the honour to submit our report in accordance with subsection 45.45 (14) of the Royal Canadian Mounted Police Act.

Lyman Robinson, Q.C.

Rosemary Trehearne

Kenneth A. Stevenson, Q.C.

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APPEARANCES:

Mr. D. Sorochan, Q.C. 1000 - 840 Howe St. Vancouver, B.C. V6Z 2M1	Ad Hoc Counsel to the Commission
Ms. T. Brucker 1200 Vanier Parkway Ottawa, Ontario K1A 0R2	Counsel for the appropriate officer in the complaints of Michael and Steven Cooper
Mr. S. M. Kelliher 201-754 Broughton St Victoria, B.C. V8W 1E1	Counsel for Michael Cooper and Steven Cooper
Mr. M. D. Macaulay, Q.C. 760 Hillside Ave. Victoria, B.C. V8T 1Z4	Counsel for Cst. D. A. Orthner
Mr. G. P. Macdonald 200 - 506 Fort St. Victoria, B.C. V8W 1E6	Counsel for W. S. Leach
Mr. B. Morahan 203 - 821 Burdett Ave Victoria, B.C. V8W 1B3	Counsel for Mr. Witmer
Mr. D. H. Vickers 301 - 506 Fort St. Victoria, B.C. V8W 1E6	Counsel for Cpl. German

REPORT

PART I: THE HEARING PROCESS

On November 26, 1990, Dr. Richard Gosse, Q.C., the Chairman of the RCMP Public Complaints Commission issued three Notices to institute hearings into complaints by Caroline Miller, Michael Cooper and Steven Cooper. By these Notices, Mr. Alan Williams, Q.C., Mr. K.A. Stevenson, Q.C. and Ms. Rosemary Trehearne were assigned to conduct the hearings into the complaints. By Notices dated the 20th day of March, 1991, Dr. Richard Gosse, Q.C., the Chairman of the RCMP Public Complaints Commission, acting in accordance with section 45.29 (7) of the Act, assigned Mr. Lyman R. Robinson, Q.C. to conduct the hearings in place of Mr. Alan Williams, Q.C.

After the date of the complaint by Caroline Miller, she married and she is now Mrs. Caroline Halliday.

The complaints by Caroline Halliday and Michael Cooper both complain about the use and application of the carotid control technique. The complaints by Michael Cooper and Steven Cooper arose from the same incident. Much of the evidence pertained to all three complaints. Consequently, the hearings for the three complaints were consolidated into one public hearing.

Public hearings were held in Victoria, British Columbia on May 21-25, 1991 and July 15-18, 1991. After hearing the testimony of witnesses, oral submissions were made by counsel. In addition, written submissions were made by Mr. Andre Morin, counsel for the appropriate officer in the complaint of Caroline Halliday, Ms. Theresa M. Brucker, counsel for the appropriate officer in the complaints of Michael and Steven Cooper, Mr. B. Morahan, counsel for Mr. Witmer and Mr. D. Sorochan, Q.C., ad hoc counsel to the Commission.

PART II: APPLICATION BY CHEK-6 TV TO TELEVISE PROCEEDINGS

Prior to the commencement hearing, an application was made by CHEK-6 Television for "news camera access" on each day of the hearing. This applications was heard by means of a telephone conference call on May 17, 1991 in which all counsel of record were invited to participate.

The issue of camera access by the television news media will likely arise in future hearings of the Commission and the rulings made in this hearing may be cited at future hearings of the Commission. Therefore, it may be worthwhile to set forth the reasons for the rulings that were made with respect to the hearings into these complaints.

Mr. David Biro, the News Director of CHEK-6 Television, presented the submissions on behalf of CHEK-6. His primary argument was that "electronic journalists" should have the same opportunity as the "pencil press" to bring the tools of their trade, namely the television news camera, into a public hearing.

Mr. Sorochan, ad hoc counsel to the Commission, supported the application of CHEK-6 on the basis of section 2 (b) of the Charter of Rights and Freedoms which provides for "freedom of the press and other media of communication". He cited examples of several commissions of inquiry where television news camera access had been permitted and several court judgments where freedom of the press had been discussed. These authorities will be discussed later.

All of the other counsel who made submissions on the interlocutory application opposed granting permission to the television news media to televise the hearings in their entirety. Mr. McKimm, counsel for the Complainant, Caroline Halliday, opposed the application on the basis that the complainant was extremely nervous about being required to testify in front of television news cameras. When she laid her complaint, she did not expect that the proceedings would take on their present magnitude and the presence of television news cameras might seriously affect her ability to give evidence.

Mr. Kardish, counsel for Constable Glen Macdonald, advised the Panel that he had been unable to obtain specific instructions from Constable MacDonald who was en route from Halifax to Victoria but Mr. Kardish took the position on behalf of his client that television coverage could be prejudicial to his client and therefore, Mr. Kardish opposed the application.

Counsel for the "appropriate officer", Ms. Brucker, opposed the application on the basis that television coverage in previous PCC hearings had been limited to the formal opening of the hearing and had been by agreement of all concerned.

Mr. Kelliher, counsel for the Coopers in the Cooper Hearing, advised the Panel that he had not been able to obtain instructions from his clients but took the position that it was unlikely that his clients were interested in television coverage.

Mr. Macaulay, counsel for Cst. Orthner in Cooper Hearing, opposed the application on the basis that television coverage would give the hearing a larger significance than it deserved.

In response to a question from the Chairman of the Panel, none of the counsel objected to televising the evidence of the expert witnesses.

At the conclusion of the interlocutory application, the following rulings were made:

1. **Television cameras, other cameras and electronic recording devices will be permitted in the hearing room during the formal opening of the hearing including the opening statement of ad hoc commission counsel.**

2. **Television cameras, other cameras and electronic recording devices will not be permitted in the hearing room during the testimony of the complainants or any officer who is named as a party and any officers who are called to testify with respect to the actual conduct that is the subject of complaint. This prohibition applies not only to media but to all members of the public who may attend the hearing. This prohibition does not apply to the Official Reporter who is recording the proceedings for the purpose of preparing a transcript of the hearings.**

3. **Television cameras, other cameras and electronic recording devices will be permitted in the hearing room during the testimony of witnesses who have qualified as "expert witnesses".**

4. **If CHEK-6 TV or other media wish to televise or record the testimony of any expert witness, the location of their equipment and the times for the set-up and removal of any cameras or other equipment shall be subject to the control of the Commission.**

The application of television news media for camera access to a hearing was based on section 2 (b) of the Charter of Rights and Freedoms which provides for "freedom of the press and other media of communication". This has been interpreted to mean that the press and other media of communication are entitled, with limited exceptions, to have access to public hearings and trials. For example, in Canadian Newspapers Co. Ld. v. A.G. Canada (1985), 49 O.R. (2d) 557 (C.A.), Howland C.J.O., writing the judgment of the Court, stated at page 574:

> "The freedom of the press to report what transpires in our courtrooms is one of the fundamental safeguards of our democratic society.

> Justice is not a cloistered virtue and judicial proceedings must be subjected to careful scrutiny in order to ensure that every person is given a fair trial. The presence of the public, including representatives of the media, ensures the integrity of the judicial proceedings. Openness of the courts is essential for the maintenance of public confidence in the administration of justice and to further a proper understanding of the judicial system."

And further on page 575:

> "There is necessarily implicit in the concept of an open court the concept of publicity; the right of the media to report what they have heard in the court-room so that the public can be informed about the court proceedings, and public criticism, if necessary, engendered should any impropriety occur."

Canadian Newspapers Co. Ld. v. A.A.. Canada was a case that involved the issue of whether the press could print the name of the complainant where the accused was charged with sexual assault. The cases of Re F.P. Publications and the Queen (1979), 108 D.L.R. (3d) 153 (Man. C.A.), Edmonton Journal v. Alberta (A.A..) (1989), 64 D.L.R. (4th) 577 (S.C.C.), and Pacific Press Ld. v. Canada (Minister of Employment and Immigration, Unreported Federal Court Judgment [1991] F.C.J. No. 313 all dealt with the access of the media to a proceeding that would otherwise have been closed to the public including the media. None of these cases dealt with "news camera access" to the proceedings.

There is no issue in the hearings into the Halliday and Cooper complaints with respect to whether or not the press and the other media of communication have access to the hearing. Section 45.45 (11) of the R.C.M.P. Act, 1986, provides:

> "A hearing to inquire into a complaint shall be held in public... ."

It was not suggested that any of the circumstances that are enumerated in the latter part of s. 45.45 (11), which may justify holding all or part of a hearing in private, apply to either the Halliday or Cooper hearings.

Only two of the cases cited by Mr. Sorochan involved television news camera coverage. New Brunswick Broadcasting Co. Ld. v. Donahoe, Unreported Nova Scotia Supreme Court Judgment No. 68444 (May 25, 1990) involved a successful application to televise the debates of the legislature. News camera access to the proceedings of the legislature raises different issues than news camera access to the testimony of witnesses before a tribunal.

In Regina v. Squires (1989), 69 C.R. (3d) 337 (Ont. D.C.) the conviction of a television news reporter was upheld where the reporter had televised persons leaving a court room where a preliminary hearing was being conducted. There was no issue with respect to the televising the preliminary hearing itself. The accused had been convicted at trial on charge under the Judicature Act, R.S.O. 1980, c. 223, s. 67. That section makes it an offence for any person to take any motion picture or other record capable of producing visual representations by electronic means or otherwise at a judicial proceeding or of any person entering or leaving the room in which the judicial proceeding is to be or has been convened. Counsel for the appellant argued that section 67 of the Judicature Act infringed the freedom of the press bestowed by s. 2 (b) of the Charter. Mercier D.C.J. concluded that s. 67 did infringe s. 2 (b) of the Charter but that the infringement was justified by s. 1 of the Charter as being a reasonable limit prescribed by law that can be justified in a free and democratic society. Ms. Brucker advised the Panel that leave to appeal has been granted with respect to the decision of Judge Mercier. Nevertheless, it may be worthwhile to quote one observation of Judge Mercier that may have a bearing on hearings of the RCMP Public Complaints Commission. At page 354, Judge Mercier stated:

> "Moreover, one must consider that many witnesses and all jurors are in court because they are obliged to be there and consequently they ought to be entitled to reasonable privacy and/or protection. If they are to have no say in whether they are to be filmed, witnesses may not be so willing to step foreword and this would obviously have a deleterious effect on trials."

It should be noted in the above quotations from the judgment of Howland C.J.O. in Canadian Newspapers Co. Ld. v. A.A. Canada that when he described the scope of s. 2 (b) of the Charter, he spoke in terms of the right to be present and "...the right of the media to report what they have heard in the court-room...". Representatives of the television news media have the right to be present at the hearings of the Commission and they are under no limitations as to what they can report. It has not yet been held by any Canadian court that the constitutional guarantee of "freedom of the press and other media of communication" includes the right to bring television news cameras into either a court room or a hearing room.

Therefore, access to the hearing by the public, including the media and representatives of the television media is assured. It is the view of this Panel of the Commission, that the right of access to hearings of the Commission and the ability to report on the proceedings satisfies the constitutional mandate set forth in s. 2 (b) of the Charter of Rights and Freedoms.

A conclusion that the television news media do not have a constitutional right to camera access, does not necessarily mean that television news cameras should be excluded from all parts of all hearings of the Public Complaints Commission. An application for news camera access should be evaluated in relation to the purpose and objectives of the legislation pursuant to which the hearings are being conducted and from the perspective of attempting to ensure that there is fair and even-handed treatment of all of the participants in the hearing process.

Mr. Sorochan cited a number of Inquiries and Commissions in which television news coverage has been permitted including:
(a) The B.C. Securities Commission's Prime/Pezim Hearing;
(b) The Dubin Inquiry into steroid use by athletes;
(c) The Parker Inquiry into the conduct of Sinclair Stevens;
(d) The Ocean Ranger Inquiry;
(e) The Grange Inquiry into the death of infants at Sick Children's Hospital;
(f) The Niagara Regional Police Inquiry;
(g) The Dryden Inquiry into the Air Ontario Crash;
(h) The Starr Inquiry;
(i) The Estey Inquiry into the CCB and Northlands Bank failures;
(j) The West Edmonton Mall Inquiry into a roller coaster accident;
(k) The Code Inquiry into the Principal Group;
(l) The Skylink Inquiry;
(m) The Owen "Discretion to Prosecute" Inquiry in British Columbia.

Two observations may be made about these inquiries. First, there is nothing to suggest that any of these Commissions or Inquiries were compelled to permit television news coverage. Presumably, either terms of reference expressly provided for news camera access or the Commission itself decided that it was in the public interest to permit news camera access. Second, most of these inquiries were Commissions that were created for the purpose of inquiring into a single incident or institution. Their purposes were quite different from the purpose of the permanent Public Complaints Commission established by Parts VI and VII of the Royal Canadian Mounted Police Act, 1986.

The primary objective of Part VII of the Royal Canadian Mounted Police Act, 1986 is to provide members of the public with an opportunity to have their complaints about the conduct of an RCMP officer reviewed by an independent Commission. Potential complainants must not be dissuaded from pursuing their complaints to the hearing stage because of the anxiety and apprehension of being required to give their testimony in front of the television news cameras. Many complainants will never have previously been photographed by the television news cameras. Most lay witnesses have some degree of anxiety about giving public testimony. This anxiety is likely to be increased by the presence of the television news cameras where they will have additional concerns about how they will look and how will they sound.

The prospect of television news coverage of the testimony of complainants may be important to future complainants who are considering whether or not to proceed with a complaint where it involves a sensitive personal matter and where perhaps the basis of the complaint is public embarrassment that the police have caused to the complainant. It is unlikely that such a complainant will pursue a complaint to the hearing stage if the complainant's testimony will be televised by the news media and broadcast to a much wider segment of the public and thereby cause even greater embarrassment notwithstanding that the complaint may be substantiated.

In the Halliday Hearing, counsel for the Complainant advised the Commission Panel that the complainant is extremely nervous about the prospect of having to give her testimony in front of a television news camera. Mr. McKimm submitted that the presence of television news cameras might seriously effect her ability to give evidence.

There may be future hearings where the complainant does not object to having his or her testimony televised or may wish to have it televised.

It was stated above that an application for news camera access should also be evaluated from the perspective of attempting to ensure that there is fair and even-handed treatment of all of the participants in the hearing process. Having decided that permission would not be granted to televise the testimony of the complainant, would it be fair to permit news camera coverage of those RCMP officers whose conduct is the subject of the complaints or who will be called to testify with respect to the conduct complained against? It was argued by Mr. Sorochan that police officers are professionals who have experience in giving evidence in court and they should not be affected by the presence of television news cameras. Fairness in this context has two aspects. The officers in question might feel that it would be unfair to allow television news coverage of their testimony but to shield the complainant from similar television news coverage. A more significant consideration, however, is the perception that the television news audience might get if they only saw and heard the officers' perception of what happened and they did not see and hear from complainant's testimony. Therefore, the Panel decided news camera access will not be permitted with respect to the testimony of any officer who is named as a party or any officers who will be called to testify with respect to the actual conduct that is the subject of complaint.

The Commission was advised that a number of expert witnesses would be called as witnesses. Different considerations apply in determining whether to permit television news coverage of the testimony of expert witnesses. First, their testimony is not directly related to the perception of the conduct which is the subject of the complaint. The testimony of the expert will be opinion evidence upon matters within his or her expertise. Although the expert witness may be cross-examined on his or her qualifications and on the opinions that are expressed, the reputation and standing of the expert witness in the community is not usually at risk in the same fashion as it may be with respect to the complainant and the officers who are parties to the hearing. There is one additional factor which persuaded the Panel to permit the television news coverage of the testimony of the expert witnesses. Commission counsel had proposed to videotape the evidence that the expert witnesses would give in the Halliday portion of the hearing in order to hopefully save the transportation and accommodation costs of calling the same witnesses again in the Cooper portion of the hearing. Therefore, whereas with respect to the other witnesses, it had been argued that the presence of the cameras and any necessary additional lighting might distract the witnesses, these witnesses were going to be subject to this distraction in any event. Furthermore, these witnesses had already been advised, when they agreed to give evidence, that there testimony would be televised.

PART III: THE CAROTID CONTROL TECHNIQUE

1. USE OF CAROTID CONTROL TECHNIQUE ON CAROLINE HALLIDAY AND MICHAEL COOPER

A technique known as the carotid control technique was used by members of the RCMP with respect to two of the complainants in these proceedings, namely, Caroline Halliday and Michael Cooper, and an unsuccessful attempt was made to apply the technique with respect to the complainant, Steven Cooper. The use of the carotid control technique is a significant aspect of the complaints of both Caroline Halliday and Michael Cooper. The nature of the carotid control technique is described in greater detail in the next section of this Report. The Commission received a great deal of evidence with respect to the carotid control technique. A reader of this Report may gain a greater appreciation of the significance of application of the carotid control technique with respect to the individual complainants if the Report initially considers the various aspects of the carotid control technique itself.

In the written submission to the Commission by Mr. Morin, counsel for the appropriate officer with respect to the Halliday complaint, and in the oral submission to the Commission by Ms. Brucker, counsel for the appropriate officer with respect to the Cooper complaints, it was submitted that the Commission should not engage in a general review of RCMP policies and procedures with respect to the use of force by members of the RCMP. Mr. Sorochan, counsel to the Commission, responded to these arguments by undertaking an extensive review of the relevant legislation, Reports of Commissions that preceded the introduction of the legislation, statements made by the Solicitor General of Canada in the House of Commons when the legislation was being considered by Parliament, and judicial decisions that have interpreted the legislation since its enactment. It is not necessary for the purposes of this Report to undertake an exhaustive analysis of these submissions and the scope of the Commission's power to make recommendations with respect to RCMP policies. It will suffice to say that it must have been the intention of Parliament that the Commission would review those RCMP policies, procedures and training programs that are related to the conduct of RCMP members that is the subject of a citizen's complaint. Indeed, it would be grossly unfair to those RCMP members, who are the subject of a complaint, to divorce the examination of their conduct from the policies and procedures under which they are required to perform their duties and the training they are provided by the RCMP in relation to the conduct which is the subject of complaint.

The purpose of the Commission in undertaking a review of the policies, procedures and training programs of the RCMP which relate to the conduct of the RCMP member that is the subject of a complaint is not to make policy for the RCMP but rather to determine whether a review of existing policies, procedures and training programs is desirable and, if it is, to make recommendations with respect to matters that should be considered during such a review.

2. DESCRIPTION AND NATURE OF THE CAROTID CONTROL TECHNIQUE

Prior to considering the specific complaints, it is necessary to understand the nature of the carotid control technique, the medical and physiological consequences that may follow from its application, the potential dangers that may accrue from its application, and the training that RCMP members receive with respect to its use.

The carotid control technique is referred to by several names. It sometimes referred to as a carotid neck restraint, the carotid hold, the "sleeper hold" or simply "carotid control".

The Commission had the benefit of hearing the testimony of several expert witnesses who testified with respect to the training of police officers in the use of the carotid control technique and the medical and physiological effects of the application of the carotid control technique.

The carotid neck restraint hold is applied to the carotid arteries, which are located on both sides of the neck. The method recommended by the RCMP training officers and most trainers is for the officer to approach the subject from the rear and place one arm around the subject's neck with the elbow in line with the subject's sternum forming a "V" with the point of the "V" in front of the subjects chin. The other arm is placed behind the subjects head to control the head and prevent it from turning or twisting. Pressure is applied with equal force on each side of the neck.

When pressure is applied on each side of the neck by the forearm and bicep of the officer, it causes a substantial reduction in the supply of oxygenated blood to the brain through the carotid arteries. Although blood supply to the brain is reduced by as much as 40%, the proper application of the hold does not stop the flow of blood to the brain. The reduced blood flow to the brain will nevertheless cause a loss of consciousness within a matter of seconds. The estimated time before unconsciousness occurs varies from a low of two seconds to as many as 8 seconds. A proper application of the carotid hold does not compress the airway or otherwise interfere with the passage of air to the lungs. The carotid control is not to be confused with "choke hold" or the "head lock".

A "choke hold" cuts off the supply of air to the lungs by compressing the airway (windpipe) in the throat. The subject of a choke hold will have the feeling of suffocation and will usually use his or her hands to try and remove the officer's arms or hand from the throat area. This action by the subject is sometimes referred to as a "clawing" motion. When this occurs, the flight or fight syndrome pumps adrenalin into the system and this often causes the subject to struggle more violently. The use of the choke hold by RCMP officers was banned in 1979.

A "head lock" is applied by using an officer's arms to immobilize a subject's head. When it is properly applied, it neither affects the air supply to the lungs nor the blood supply to the brain.

3. PHYSIOLOGICAL EFFECTS OF CAROTID CONTROL AND THE POTENTIAL MEDICAL CONSEQUENCES THEREOF

EXPERT MEDICAL EVIDENCE:
Dr. Donald T. Reay is currently the Medical Examiner for King County including the City of Seattle, in the State of Washington and he is an Associate Professor of Pathology at the University of Washington. He has examined three deaths associated with the use of the carotid control technique by law enforcement or corrections personnel. He has also conducted empirical research on the physiological effects of the application of the carotid control. The results of this research have been published in article by Drs. Reay and Holloway entitled "Changes in carotid blood flow produced by neck compression", *The American Journal of Forensic Medicine and Pathology*, Vol. 3 (1982). He has also published other articles on the use of neck holds.

The subjects who participated in Dr. Reay's empirical research project were F.B.I. personnel who were in fine physical condition. One of the physiological effects on the subjects that Dr. Reay observed following the application of the carotid hold was a reduced heart rate. Dr. Reay explained that when pressure is applied to the pressure receptors in the carotid sinus area, they send a reflex neural impulse to the heart which causes the heart to slow down and sometimes to stop.

In Dr. Reay's opinion, neck holds are potentially lethal holds because it is impossible to know the physiological characteristics of the subject and therefore it is impossible to predict the consequences that may occur from an application of the carotid control technique. In their article, entitled "Changes in carotid blood flow produced by neck compression", The American Journal of Forensic Medicine and Pathology, Vol. 3 (1982), Drs. Reay and Holloway state at pages 256-57:

> "Fatal consequences of neck holds can be anticipated because of their physiological effects. Pre-existing natural disease increases the likelihood of a fatal outcome, even when a hold like the carotid sleeper is applied correctly. Underlying cardiac disease such as coronary artery disease and cardiac rhythm disorders are particularly vulnerable to reflex carotid sinus stimulation and hypoxia. Diseases that affect the carotid arteries, most commonly arteriosclerosis, can significantly narrow vessel lumens. Pressure applied to a diseased vessel can dislodge artherosclerotic plaque and produce fatal strokes. Compression of the vessel can damage the intimal lining of the vessel wall and cause an occluding thrombus to form and produce cerebral infarcts"

Drs. Reay and Holloway proceed to identify five groups of people who may be at a greater risk of death from a neck hold. These include:

1. Men over the age 40 because the incidence of coronary artery disease increases sharply after the age of 40.
2. Persons with a history of a seizure disorder.
3. Mentally disturbed persons, particularly the manic depressive psychotic in the manic phase.
4. Persons using street drugs and alcohol.
5. Persons taking prescription drugs because the side effects of many prescription drugs may predispose their users to cardiac arrhythmias.

In his capacity as Medical Examiner for King County in the State of Washington, Dr. Reay referred to three deaths that he had investigated where the application or misapplication of the a carotid hold was the proximate cause of death. In the first two of these cases, the evidence suggested that the carotid hold was either misapplied or it had gone from a carotid hold to a choke hold because in both cases there had been a fracture of the thyroid cartilage which indicates that the victims died from strangulation. In the first case, the subject was a 58 year old person and death was attributed to cardiac arrest as a consequence of the subject's pre-existing arteriosclerotic hypertensive heart disease. In the second case, the subject was a 35 year old muscular man with no physical problems. Prior to the application of the carotid hold, he had been given lithium to control a manic depressive psychosis. In the third case, the carotid hold had been applied by well-trained person who was an instructor in the use of the carotid control technique at the police academy in the State of Washington. The autopsy did not reveal any damage to the airway or any pre-existing physical or medical conditions. Dr. Reay concluded that the carotid control technique had been properly applied. The application of the hold caused the heart to stop.

Dr. Reay also provided the Commission with information he had collected with respect to other deaths and injuries that had occurred in the United States after the application of the carotid hold by police officers or prison personnel. One case involved an instructor at a Florida Police Academy who suffered a partial paralysis after the application of the hold in a training exercise. The paralysis was apparently caused by a stroke.

The Commission also received evidence and information with respect to several deaths and injuries that have occurred in Canada following the application or misapplication of the carotid control technique by police officers.

THE JURIS R. LAUFERS CASE

The Report of the Board of Inquiry into the complaint of Juris R. Laufers under the Metropolitan Toronto Police Force Complaints Act, 1984 was filed with the Commission. The report refers to the following potential consequences that may occur following an application of the carotid hold:

1. Plaque may be dislodged from the arteries of a person suffering from arteriosclerosis of the arteries and this may cause a stroke.
2. The structures in the neck may be injured and tissue swelling may cause the airway to the lungs to be cut off.
3. The loss of consciousness by an intoxicated person may impair reflex actions designed to guard the airway to the lungs.

THE LORNE HALLDORSON CASE

The Autopsy Report and the Recommendations of the Public Inquiry into the death of Lorne Halldorson, conducted under the Alberta Fatality Inquiries Act, were filed with the Commission. The Report of the Inquiry describes the circumstances in which the death occurred. Two RCMP officers were grappling with Mr. Halldorson in a ditch at night in an attempt to restrain him after he had assaulted one of the officers without provocation. Mr. Halldorson lost consciousness following the application of carotid hold. He did not regain consciousness and he was pronounced dead upon arrival at the High Prairie Hospital. The medical cause of death was found to be "Cerebral Hypoxia and Cardio Respiratory Arrest". The Autopsy Report attributed the cause of death to be "...the result of the application of pressure around the neck (throttling)." The report states that several mechanisms may be involved in causing death by throttling. These were summarized as follows:

"1. Airway obstruction. The upper airway may be occluded by backward pressures on the epiglottis....This respiratory obstruction produces a truly asphyxial form of death."

"2. Carotid occlusion. Compression of the carotid arteries (the main blood supply to the brain), deprives the brain of blood and the oxygen it carries, rapidly rendering the subject unconscious and, if severe or prolonged, leads to death."

"3. Vagal Inhibition. Pressures on structures in the neck may lead to neurological reflexes which may slow or stop the heart thereby stopping blood flow to the brain and causing sudden death."

The Inquiry Report found that the officer who applied the hold acted in good faith, conscious of his responsibilities for the health and the safety of his prisoner and accordingly the manner of death was found to be accidental.

THE GASTON HARVEY CASE:

A copy of the Inquest Report into the death of Gaston Harvey who died in 1986 in Quebec at the age of 38 was filed with the Commission. This death occurred when members of the Quebec Provincial Police were called to intervene at a labour dispute and demonstration involving the Manoir Richelieu. A dispute arose between several police officers and Mr. Harvey who was moderately intoxicated. A neck hold was placed on Harvey for the purpose of getting him into a police car. Harvey continued to struggle and a second neck hold was immediately placed on Harvey to get him out of the police car for the purpose of handcuffing him. It is apparent from the report that Harvey lost consciousness after the second application of the neck hold. He was placed in a police van for a three or four minute ride to the police station. He was subsequently taken to hospital where death was pronounced. Several autopsies were performed. One indicated that the brain suffered from a lack of oxygen. The Inquest Report states:

> "All the experts acknowledged that in these places, or very near to them are found the carotids, the carotid sinuses, the carotid bodies and the vagus nerve. The neck is thus an extremely dangerous area, for pressure on one of these structures could have serious consequences for the heart rate and/or respiratory rate, in addition to provoking cerebral ischemia (lack of blood).
>
> "All the experts recognized that the neck hold had in this case caused such pressure; however, they were not able to specify either its intensity or its duration."

The Inquest Report found that the immediate cause of death was an indeterminate neck hold which led to cardio-respiratory arrest and all the disorders leading to death and that the neck hold had been applied by an officer who did not have specific training in the use of the carotid control technique.

The Inquest Report included recommendations that:

1. Every police officer in Quebec be informed of the dangers inherent in the neck hold and of its unforeseeable consequences.
2. No police officer apply such a neck hold without adequate training.
3. Training should be provided on a continuing basis.

THE ERIC LUTHER CASE:
A copy of the Autopsy Report and a transcript of the proceedings of the Inquest into the death of Eric Luther who died in British Columbia in 1977 was filed with the Commission. The death occurred when an RCMP officer attempted to subdue an extremely violent person who was suffering from a mental illness. A reading of the testimony of the officer suggests that he attempted to use a carotid control technique but he was unable to apply the hold because of the extremely violent resistance of Luther. The officer then resorted to what has been described by some witnesses before the Commission as a "C-clamp" or "tigerclaw" hold where one

hand is used on the front of the neck. Consequently, the Luther case is not relevant to a discussion of the carotid control technique.

Several deaths in the United States have been attributed to the use of the carotid control technique. In addition to the testimony of Dr. Reay, information about other deaths in the United States that occurred after the application of the carotid control technique was provided to the Commission by Mr. Larry H. Smith, an officer and instructor at the San Diego Police Academy. The Commission was also presented with newspaper clippings and magazine articles with respect to deaths in the United States that apparently occurred after the application of a carotid control technique. The Commission does not doubt that these deaths occurred in close proximity to the application of the carotid control technique. But without further evidence about the surrounding circumstances, the medical condition of the deceased, the training of the officer who applied the hold and the manner in which the hold was applied, the Commission cannot draw any inferences from these deaths.

FINDINGS:

(A) The use of the carotid control technique, even when properly applied, carries a small but significant risk of death or serious bodily harm. Death or bodily injury may occur where the hold
  - **(i) is initially applied in a proper manner but the struggles of the subject cause the hold to slip or cause injury to the subject;**
  - **(ii) is properly applied but the subject is suffering from certain physiological or medical conditions.**

(B) The use of the carotid control technique is a preferable alternative to the use of a firearm or a blow to the head by a baton or similar object.

4. TRAINING OF RCMP OFFICERS IN USE OF CAROTID CONTROL TECHNIQUE

(a) TRAINING OF RCMP RECRUITS

The Commission Panel heard evidence with respect to the training of RCMP recruits from:

Assistant Commissioner Legasse, who is presently the Director of Training for the R.C.M.P.;

Raymond Richard Hale, a retired member of the RCMP, who spent 15 years as an instructor at the RCMP Training Academy in Regina and who was in charge of the self-defence unit for a period of years commencing in 1978;

Cpl. Roger George Franklin who is currently a self-defence instructor at the RCMP Training Academy in Regina;

Douglas William Farenholtz, a former member of the RCMP who spent nine years in the RCMP Training Academy in Regina before accepting a position with the Justice Institute of British Columbia in 1981 where he is responsible for the development and presentation of physical training programs.

The Commission was provided with a copies of the "RCMP Academy Basic Recruit Training Course Orientation and Reference Manual", excerpts from the "Course Training Standard" of the Basic Recruit Training Course and "R.C.M.P. Academy 'Depot' Division Self Defence Handout".

The Self-Defence Unit of the "RCMP Academy Basic Recruit Training Course Orientation and Reference Manual", includes the following description of come-along techniques including carotid control techniques at page 7-14:

> "ii) During the police defence segment of the program, recruits will be instructed in the removal, come-along/controlling and entry techniques and ample time is provided to practice and perfect same. Also taught are Carotid Control techniques which are an integral part of a police officer's repertoire of self-defence methods for controlling uncooperative or violent suspects. Although these latter techniques are fairly safe there is always a risk involved when rendering an individual unconscious, therefore instruction will also include the necessary action required of a police officer to ensure that the suspect regains consciousness."

The "Course Training Standards" of the RCMP Basic Recruit Training Course are intended for use by instructors in making up their lesson plans. Copies are not given to the recruits to read. The Self Defence Chapter, Section E, is entitled "Police Defence Techniques (Removal, Come-Along/Controlling and Entry Techniques)". Paragraph 2 uses much the same language of the Manual quoted above. In addition, it states:

> "Although carotid techniques are fairly safe there is always a risk involved when rendering an individual unconscious. This danger becomes more prevalent in older people, especially those with a previous history of cardiac disease. In addition, heavy smokers, heavy drinkers and those who are physically unfit and have poor diets are also at

> risk. Such individuals often have high blood pressure and/or hardening of the arteries which make them more susceptible to heart failure should they be rendered unconscious by carotid control techniques."

Paragraph 3 of the Course Training Standard outlines the content of some of the sessions. Session (b) has particular relevance to the Caroline Halliday and the Michael Cooper complaints. This session includes:

> "Putting a resisting, arrested violator into a police car, or through a doorway, or into a cell:"

A number of techniques are listed underneath this heading including carotid control. Mr. Hale testified that order of listed techniques did not suggest the order in which the techniques should be tried to accomplish the objective. A member can use whichever technique the member thinks is most appropriate at the time. Furthermore, he testified that the carotid control technique is taught as a come-along technique that may be used even when there is no perceived danger or risk to the officer from the subject. Cpl. Franklin testified that he teaches RCMP members to use a continuum of force. When it is possible, an officer should begin by using verbal suggestions and then progress up to lawful commands, gentle restraint such as taking the person by the arm, and thereafter, if necessary, using pain holds and pressure points, ground fighting and, carotid control. This is particularly relevant to the Michael Cooper complaint. The evidence with respect to that complaint is that Constable Leach applied the carotid control technique as a first resort without any verbal communication with Michael Cooper. In cross-examination of Mr. Hale by counsel for Constable Leach, Mr. Hale agreed that it was absolutely critical for a police officer at a scene to make sure that he is in control and that he or she gains control quickly and as effectively as possible with the least amount of violence.

A Self Defence Handout was formerly given to recruits. According to Mr. Hale's testimony, distribution of the handout was discontinued when parts of it became outdated. Recruits now receive all of their instruction orally. The Self Defence Handout began on page 8 by describing the carotid control technique as a "method to control uncooperative and/or violent suspects" and as "relative passive methods of gaining control or of rendering an individual unconscious, if necessary". After remarking that the "indiscriminate use by a few individuals could conceivably result in them being excluded as a means of Self-Defence", the handout proceeds to outline some of the primary dangers in using the carotid control technique. These include

i) applying the technique for too long; ii) improper application of the technique; iii) improper takedown; and iv) the physical condition of the suspect. Under the latter heading, it states:

> "The possibility exists that the heart may stop beating when a Carotid Control Technique is applied. Normally it resumes beating in seven to ten seconds, however, there is always a chance that it will not. This is more prevalent in elderly people, especially those who are heavy drinkers. Such individuals often have high blood pressure and/or hardening of the arteries."

On the subject of medical examination the Handout states:

> "Force policy does not state that a subject who is rendered unconscious by a Carotid Control Technique must be examined by a medical practitioner...."

The Handout states:

> "an individual who complains of an injury, following the application of one of these techniques should be checked by a Doctor."

Mr. Hale testified that recruits must be certified in first aid and "C.P.R." before they leave the academy.

Several of the RCMP members who testified before the Commission including Constables Macdonald and Leach stated that they were aware that the carotid control technique could have harmful consequences including death if the technique was misapplied or if the hold was applied was too long but they were unaware of potentially dangerous consequences that could occur after a proper application of the carotid control technique. In particular, some of the officers were not aware that persons who have certain physiological or medical conditions may be at a greater risk of suffering harmful consequences from the application of the carotid control technique.

Corporal Franklin testified that when the number of hours devoted to self-defence training was reduced from 80 hours to 69 hours, some self-defence techniques could not longer be taught. Among the techniques that are no longer taught are "finger locks" and wrestling. In Corporal Franklin's opinion the finger locks are an excellent method of obtaining a subjects compliance.

FINDINGS:

(C) No distinction is made in the Recruit Training Program of the RCMP between the use of carotid control
  - **(a) for the purpose of self-defence of the officer or the defence of others from physical attack; and**
  - **(b) for the purpose of controlling uncooperative suspects.**

(D) RCMP members are not adequately educated about the risk of death or serious injury that may follow the proper application of the carotid control technique.

(b) IN-SERVICE TRAINING AND RETRAINING

Several of the longer serving officers who testified before the Commission acknowledged that they had never been trained in the use of the carotid control technique notwithstanding that the use of the carotid control technique was for a period of time expressly authorized by the Operations Manual. The technique had not been taught during their recruit training and they had not received any in-service training with respect to the use of carotid control.

The officers who were trained in the use of carotid control as part of their recruit training testified that they had not received any in-service training or evaluation with respect to their use of the carotid control technique since their recruit training. Constable Macdonald, for example, testified that he had not received any in-service training with respect to the carotid control since his recruit training in 1981 other than being provided with the opportunity of viewing a videotape several days prior to the commencement of these hearings. Constable Leach testified that he had not been required to practice other come-along of compliance holds since his initial recruit training. Furthermore, he testified that he had not received any update on the use of other come-along holds. Consequently, it became apparent from his testimony that the carotid hold had become the hold of first instance for Constable Leach.

Both Corporal Franklin and Mr. Hale, acknowledged that the Force does not have in-service training or retraining programs to ensure that members maintain their skills in the use of the carotid hold and other come-along techniques. Mr. Hale has produced a video on the application of the carotid hold as well as some other self-defence techniques. Mr. Hale acknowledged that some Divisions or detachments might put on their own programs that may include elements of self-defence training.

The Commission was provided with a copy of an excerpt from the Vancouver City Police Department Training Manual with respect to the need for in-service training with respect to carotid neck restraint. It provides:

> "Police officers should remember it, however, intensive in-service training programs should also be attended to ensure that all potential users of the neck restraint hold are both knowledgeable and technically competent in its application."

RECOMMENDATION:

1. **The RCMP consider the development and provision of in-service training programs in the use of compliance techniques and come-along holds including the carotid control technique for officers who are expected to operate in the field. These programs should be provided at regular intervals and should include an evaluation of an officer's skills, retraining where required, and instruction with respect to new information and techniques.**

(c) PROFESSIONAL DEVELOPMENT OF TRAINING STAFF

The six month R.C.M.P. Recruit Training Program is one of the longest recruit training programs among professional police forces. The program has developed an excellent world-wide reputation. The reputation of the program and high quality of its graduates can only be maintained if the training staff have the opportunities to continue their professional development and to reflect this development in the content of the recruit training program. This inquiry has focused upon the Self-Defence component of the Recruit Training Program. It is important that the training officers in this component of the program have opportunities to learn from experts in related fields and about developments in other progressive police forces. Without new ideas and the introduction of new knowledge and techniques, the program will stagnate as former students become instructors and simply pass on what they learned without any advances.

The Commission heard evidence that until recently, the self-defence instructional staff at the Training Academy had not had regular opportunities to attend seminars and other educational programs where they would meet experts from other police forces and other countries and where they could learn about new information and equipment with respect to self-defence and compliance techniques.

RECOMMENDATION:

2. **RCMP Training staff should be encouraged to develop their knowledge and skills, which are related to their training responsibilities, by attending seminars, and training programs, and reading current literature and journals. In particular, they should be encouraged to attend programs where representatives of other police organisations are making presentations.**

5. RCMP POLICY WITH RESPECT TO THE USE OF THE CAROTID CONTROL TECHNIQUE

The "RCMP Operations Manual" contains most of the policies of the RCMP that apply to field operations of the RCMP. A copy of the RCMP Operations Manual is located in every detachment office. Prior to 1990, Appendix III-2-1 of the Operations Manual contained several paragraphs about the carotid control technique. One paragraph described the three authorized techniques of applying carotid control, another paragraph described "Safety Precautions" that should be followed when using the carotid control technique and the final paragraph described "First Aid" measures that should be taken when a person has been rendered unconscious. The introductory paragraph stated:

> "a. The techniques in this appendix use the application of pressure to the carotid arteries as an effective means of restraining a violent person."

The paragraph on Safety Precautions included the following provision:

> "1. Prolonged application of pressure may result in a dangerous shortage of oxygen to the brain with resultant brain damage or ultimately death."

Ms. Brucker, counsel for the appropriate officer, advised the Commission that the Operations Manual was "down-sized" in late 1989 or early 1990. One of the objectives was to remove material that was duplicated elsewhere including matters related to training. The above mentioned paragraphs that pertained to the carotid control technique were removed from the Operations Manual as part of the "down-sizing".

At the present time, the Operations Manual is silent with respect to the carotid control technique.

The above mentioned paragraphs that have been removed did not provide much guidance to RCMP members with respect to the circumstances in which it was appropriate to use the carotid control technique. The introductory paragraph only stated that it was "an effective means of restraining a violent person." The only warnings that were given with respect to its use were that members should avoid compressing the windpipe because that could cause fatal injury by blocking the passage of air to the lungs and that prolonged application could cause a dangerous shortage of oxygen to the brain with resultant brain damage or death. The policy did not warn officers of any of the dangerous consequences, which are discussed in an earlier section of this Report, that may flow from a proper application of the carotid control technique.

6. REPORTING USE OF THE CAROTID HOLD IN FIELD OPERATIONS

If an RCMP officer uses a firearm, there is a requirement that a written report be prepared. There is no similar requirement with respect to the use of the carotid control technique. Without the existence of written records, it is difficult to determine the frequency with which the carotid control technique is used and the physical or medical consequences, if any, that occur from its use. On the basis of the officers who testified before the Commission, some officers use the carotid control technique more frequently than other officers. The absence of such records makes it difficult for commanders to determine whether the carotid control technique

(a) is being used in inappropriate circumstances by an officer,
(b) is being used more frequently by particular officers,
(c) is being used more frequently in specific geographic areas.

The Report to Crown Counsel with respect to the criminal investigation into the conduct of Constable Macdonald involving the complaint of Caroline Halliday did not contain any reference to the application of the carotid hold to Caroline Halliday.

RECOMMENDATION:

3. **The RCMP consider the development and use of a form on which any use of the carotid control technique will be recorded and which will enable the commanding officer of each detachment to periodically review the use of the carotid control technique by RCMP members of the detachment.**

7. REVIEW OF RCMP POLICY WITH RESPECT TO THE USE OF THE CAROTID CONTROL TECHNIQUE

The Commission recommends that the RCMP conduct a review of its policy with respect to the use of the carotid control technique. In conducting this review, consideration should be given to the growing body of knowledge that is referred to above concerning the potential physiological effects of using the carotid control technique, the new policies and training programs that other law enforcement agencies have developed with respect to the use of the carotid control technique, and the concerns that have been expressed by courts and other commissions of inquiry with respect to the use of this technique.

(a) POLICIES OF OTHER POLICE AGENCIES

The Commission received evidence and information with respect to policies concerning the use of the carotid control technique that have been developed by other police forces or agencies that are responsible for the enforcement of the criminal law. Descriptions of and quotations from these policies are set forth below. The Commission believes that these policies may provide worthwhile information to those within the RCMP who have the responsibility of revising existing policies and developing new policies.

ONTARIO SOLICITOR GENERAL'S POLICY

On December 18, 1990, Carl R. Johnston, the Assistant Deputy Minister to the Solicitor General of Ontario sent a memorandum to all Chiefs of Police and the Commissioner of the Ontario Provincial Police with respect to the use of the carotid restraint hold. That memorandum stated:

> "Concern has been expressed recently about the dangers inherent in using the carotid restraint. This is to remind you that the carotid restraint should only be used in accordance with the following principles:
>
> 1. An officer should not use the carotid restraint without proper training.
>
> 2. Even if an officer has been trained, and continues to possess the skill and confidence to apply the restraint properly, the carotid restraint should be used only as a last resort as an alternative to the baton or revolver. This restraint could cause permanent injury or death, and officers should be aware of its possible consequences. Dr. Jim Young, Chief Coroner for Ontario, has warned: "Carotid restraint is a high level of force to be used only where there is a

danger to the life of an officer or another person and is only preferable to a blow on the head with a baton or the use of a firearm.

3. Where an officer has not recently been trained or is unclear about how to use the carotid restraint, the officer should review the Carotid Restraint Training Manual which has been prepared by the Ontario Police College."

METROPOLITAN TORONTO POLICE FORCE

The Report of the Board of Inquiry into the complaint of Juris R. Laufers under the Metropolitan Toronto Police Force Complaints Act, 1984 includes a quotation from a routine order issued by the Metropolitan Toronto Chief of Police on January 4, 1991 which incorporates the above quoted memorandum from the Ministry of the Solicitor General.

CITY OF VANCOUVER POLICE DEPARTMENT POLICY

The Commission was provided with a copy of the policy of the City of Vancouver Police Department on neck restraint holds. It provides:

> "The Vancouver Police Department supports the use of the neck restraint hold only if the following criteria are met:
> 1. There exists a situation demanding immediate control over a violent person.
> 2. No lower level of force would be appropriate in the given situation.
> 3. There is no reason to believe that the person being subdued will suffer any injury.
> 4. The officer applying the technique has been properly trained.

WASHINGTON, D.C. POLICE FORCE

The Commission was provided with a copy of a special order made by the Council of the District of Columbia dated December 31, 1986 entitled "Limitation on the Use of the Chokehold Act of 1985" Despite the reference in the title to "chokehold", it is clear that the special order pertains to the use of the carotid neck restraint by members of the Washington D.C. Metropolitan Police Department. The special order provides in part:

> "The following policy and procedures shall govern the use of the carotid neck-restraint technique by sworn members of the department.
>
> "Members shall:
> 1. Be prohibited from utilizing the bar-arm (choke) hold for any purpose.
> 2. Utilize the carotid neck-restraint technique

only under those circumstances and conditions wherein the use of force is reasonable or necessary to protect the life of a civilian or a law enforcement officer, and has been effected to control or subdue an individual.

3. Be certified in First Aid/Carotid Recovery techniques as a prerequisite to using the carotid neck-restraint.
4. Have satisfactorily completed the Training Division's course on "Use of Carotid Neck-restraint" before using the hold.
5. Refrain from applying the carotid neck-restraint repeatedly on a suspect.
6. Immediately transport these suspect to an emergency medical or acute care facility for examination, treatment or observation in the event the recipient of the carotid neck-restraint shows signs of injury, complains of injury, appears to be under the influence of alcohol or drugs, shows signs of acute mental disturbance, or becomes unconscious during or following application of the hold.
7. Execute P.D. Form 313 (Injured Prisoner Report... .
8. Execute P.D. Form 251 with the classification reflecting both the incident/offense and the use of the carotid neck-restraint, when the hold is used to subdue or control and individual. All other aspects of these case shall be handled in accordance with General Order 901.1, Part IIIC3f (Use of Firearms or Other Service Weapons)."

(b) TRAINING MANUALS OF OTHER POLICE FORCES

The Commission received evidence and information with respect to training programs of the Ontario Police College and the Vancouver City Police Department in relation to the carotid control technique. The Commission believes that these programs reflect policies that may provide worthwhile information to those within the RCMP who have the responsibility of revising existing policies and developing new policies. Descriptions of and quotations from these policies are set forth below.

ONTARIO POLICE COLLEGE

The Report of the Board of Inquiry into the complaint of Juris R. Laufers under the Metropolitan Toronto Police Force Complaints Act, 1984 includes the following quotation from Ontario Police College Self-Defence Training Manual (April, 1988):

"1. The use of the Carotid Restraint to control a suspect is a potentially dangerous tactic.

2. It should only be used where there is immediate danger to the life of an officer or another person.
3. It should be used only where there is no less violent means of controlling a suspect.
4. Only the Carotid Restraint, as taught at the Ontario Police College and as outlined in this manual, should be employed.
5. Just as firearms and baton techniques should be reviewed regularly, this material should also be reviewed. The hold or any neck hold should never be used if any doubt exists about your ability to properly apply it.
6. If the technique is employed, the officer in charge should be made aware so that the suspect's condition can be monitored if he is held for any period of time in your force's cells.
7. You must also be prepared to use cardiopulmonary resuscitation.
8. You may be called upon to justify the use of this technique."

VANCOUVER CITY POLICE DEPARTMENT
The Commission was provided with a copy of an excerpt from the Vancouver City Police Department Training Manual with respect to carotid neck restraint. It states:

> "The neck restraint hold should not be used merely to make the person more manageable or to save time in making an arrest. It must be emphasized that the use of force at the neck restraint level is to be used only in unusual situations. Neck restraint should only be used as a last resort of gaining control over an offender due to the inherent risks involved in its applications, as indicated under "Effects and Inherent Risks".

(c) JUDICIAL FINDINGS

In Drda v. The Queen, an Unreported Judgment of the British Columbia Supreme Court, Vancouver Registry No. CC891894 (November 16, 1990) the accused was charged with impaired driving and refusing a lawful demand to provide a breath sample after colliding with a stationary police car. After produced his driver's licence and vehicle registration, the accused began to walk away from the scene. In response to the officer's command that Drda remain at the scene, Drda told the officer that he could go anywhere he wanted. When the officer grabbed Drda and Drda resisted, the officer applied a carotid neck restraint hold that rendered Drda unconscious for about 10-15 seconds. The trial judge acquitted Drda of impaired driving but convicted him of refusing to provide a breath sample after a lawful demand. On appeal to the British Columbia Supreme Court, Huddart J. allowed the accused's appeal and quashed the conviction on the basis that the unwarranted application of a neck restraint hold raised a reasonable doubt whether Mr. Drda had a reasonable excuse for refusing to provide a breath sample. Huddart J. stated:

> "Nevertheless, the choke-hold and subsequent unconsciousness endured by Mr. Drda deprived him of his liberty and fundamental dignity as an individual. In my view, this invasion of his rights was neither necessary nor reasonable given the nature of the situation. Although Mr. Drda was unpleasant, the evidence does not suggest that he was attacking or threatening either of the officers in any way. There is no indication that a lesser form of restraint would not have worked just as well. Although Constable Carter had common law authority to detain the appellant, he did not have the right to effect this end at any cost. The grossly excessive, unwarranted use of a choke-hold to render Mr. Drda unconscious, took this act beyond the scope of police powers at common law and rendered it unlawful."

Although Huddart J. uses the term "choke-hold" in the quoted paragraph, it is more likely, based on the judgment of the trial judge, that the officer applied the carotid control technique.

(d) 1984 ALBERTA PUBLIC INQUIRY RECOMMENDATIONS

Two recommendations were made following the 1984 Alberta Public Inquiry into the death of Lorne Halldorson following the application of the carotid hold by an RCMP officer. First, it was recommended that a review be undertaken by the RCMP to determine whether it was appropriate to apply the carotid control technique where it was impossible for the officer to tell whether the subject had lapsed into unconsciousness because of darkness and being on the ground. Second, it was recommended that a review be undertaken by the RCMP to determine if there should be mandatory communication between officers as to what each is doing when both are engaged in restraining the same subject. These recommendations were reviewed by the Training and Development Branch of the RCMP. The response by the RCMP, recorded in a memorandum dated 84-08-03, stated:

> "It would be most difficult, if not impossible, to limit the circumstances under which a carotid control should be applied. Instruction in the application of carotid controls is provided to control violent, resisting persons when no lesser

means of force will do. Our members are trained in the use of force and this training impresses on them the requirement to use the appropriate level of force for a given situation. In many cases, carotid controls are used as an alternate to a greater degree of force, such as stricking (sic) with a baton or use of a firearm."

"Consequently, we are of the opinion that rather than restricting the hold...it is far better for our members to be well trained to:

1) correctly applying a neck restraint,
2) properly understanding how much force to use,
3) the physiological effects to the body,
4) when to conclude the restraint from a safety point of view, and
5) to ensuring proper after care in the event of unconsciousness."

FINDINGS:

(E) The response of the Training and Development Branch of the RCMP to the recommendations of the Halldorson Inquiry does not adequately recognise the potentially dangerous consequences that may flow from a proper application of the carotid control technique and the response misplaces the emphasis that should exist in the training programs of the RCMP on potentially dangerous consequences that may flow from the use of the carotid control technique on people who may suffer from various physiological or medical conditions that will be unknown to the RCMP member.

(F) The use of the carotid control technique is a preferable alternative to the use of a firearm or a blow to the head by baton or similar object.

RECOMMENDATIONS:

4. The RCMP should review the growing body of knowledge with respect to the physiological and medical effects of applying the carotid control technique, the policies and training manuals that have been developed by other police forces and law enforcement agencies and the concerns expressed by courts and other commissions of inquiry and revise and develop its policies and training programs with respect to the use of the carotid control technique having particular regard to

(a) its use when RCMP policy otherwise authorizes the use of lethal force.

(b) the safety of the officer or other persons who may be in danger by reason of the conduct of the person on whom it is proposed to use the carotid control technique;

(c) the availability and suitability of other methods of effecting an arrest or achieving compliance with the lawful commands of an officer that less potential to cause harm; and

(d) not using the carotid control technique either as a method of merely controlling an uncooperative suspect or as a come-along technique where a potentially less dangerous means of accomplishing the RCMP member's objective may be used.

5. The RCMP consider reintroducing its policy with respect to the use or application of the carotid control technique and any revisions of this policy into the RCMP Operations Manual or other document where it will be readily available to all members of the RCMP.

6. RCMP Members should be advised of the potentially dangerous consequences that may occur even from a proper application of the carotid control technique.

7. The self-defence component of the Recruit Training Program be reviewed and, if advisable, revised having regard to the factors enumerated in Recommendation Four.

PART IV. COMPLAINTS BY MICHAEL & STEVEN COOPER

The complainants Michael and Steven Cooper are a father and son. Their complaints arose out of events that occurred in the early morning hours of May 27, 1989, when a truck driven by Michael Cooper was stopped by two RCMP officers. Steven Cooper was a passenger in the truck. Michael and Steven Cooper filed separate complaints that pertain to different aspects of the events that occurred on that date. Both complaints named Constables Leach and Orthner, and Corporal German as being the officers against whom the complaint was being made.

In both complaints, Auxiliary Constable Witmer was named as an "Involved Member" but auxiliary constables in British Columbia are governed by the Police Act, S.B.C. 1988, c. 53. Therefore, Auxiliary Constable

Witmer was not a "party" to these proceedings. Nevertheless, he was called as a witness and he was represented by counsel who participated fully in the hearings of the Commission.

1. THE COMPLAINTS OF MICHAEL COOPER

The complaints on the Form 1442 filed by Michael Cooper are that he had been assaulted and that excessive force had been used in effecting his arrest. The written complaint of Michael Cooper dated June 1, 1989, and the statement of Michael Cooper dated June 1, 1989, describe the application of the carotid control technique and allege that a RCMP officer placed his boot on the neck of Michael Cooper when the latter attempted to get up after he had been lying on the ground following the application of the carotid control technique.

An internal investigation of Michael Cooper's complaint was undertaken by the RCMP. By a letter dated September 13, 1989, Chief Superintendent Clarke informed Michael Cooper that the internal investigation had been completed and that the results of the investigation provided no evidence of an assault upon his person and that only sufficient force had been used to effect his arrest. Further, the letter informed Michael Cooper that the investigation had not revealed any breaches of the RCMP Code of Conduct.

Michael Cooper was not satisfied with the disposition of his complaints by the RCMP and he pursued his complaint with the Commission.

On November 26, 1990, the Chairman of the RCMP Public Complaints Commission issued a Notice of Decision to Institute a Hearing into the complaint of Michael Cooper. The Notice named Constables Leach, Orthner and Corporal German as parties in the hearing.

2. THE COMPLAINTS OF STEVEN COOPER

The complaints on the Form 1442 filed by Steven Cooper were that he had been assaulted and that excessive force had been used by the named officers when he tried to intercede in his father's arrest. The written statement of Steven Cooper dated May 30, 1989, gave particulars of his complaints. First, he complained that an officer smashed his faced up and down against the pavement. Second, he complained that he had received blows to his head, ribs, back and left arm. Third, he complained that an officer grabbed his windpipe after he had been handcuffed.

An internal investigation of Steven Cooper's complaint was undertaken by the RCMP. By a letter dated

September 13, 1989, Chief Superintendent Clarke informed Steven Cooper that the internal investigation had been completed and that the results of the investigation revealed that only sufficient force had been used to effect his arrest. Further, the letter informed Steven Cooper that the investigation had not revealed any breaches of the RCMP Code of Conduct.

Steven Cooper was not satisfied with the disposition of his complaints by the RCMP and he pursued his complaint with the Commission.

On November 26, 1990, the Chairman of the RCMP Public Complaints Commission issued a Notice of Decision to Institute a Hearing into the complaint of Steven Cooper. The Notice named Constables Leach, Orthner and Corporal German as parties in the hearing.

3. WITHDRAWAL OF COMPLAINTS AGAINST CORPORAL GERMAN & CONSTABLE ORTHNER

At the conclusion of the testimony of all of the police officers who had been called as witnesses at the hearings, Mr. Kelliher, counsel for both Steven and Michael Cooper, formally advised the Commission that he had received instructions from Steven Cooper and Michael Cooper to withdraw their complaints in so far as the complaints pertained to Corporal German and Constable Orthner on the basis that there was no evidence before the Commission to substantiate any complaint against either of these two officers. Mr. Kelliher further stated that he had been instructed by Steven and Michael Cooper that, upon hearing the evidence at the hearing, they believed that Corporal German and Constable Orthner had carried out their duties in accordance with the highest standards of the RCMP.

Upon the withdrawal of the complaints in so far as they pertained to Corporal German and Constable Orthner, their respective counsel advised the Commission that they were withdrawing from further participation in the hearing.

FINDING:

(G) Corporal German and Constable Orthner carried out their duties with respect to the matters related to the complaints by Michael and Steven Cooper in accordance with the highest standards of the RCMP and there is no evidence that reflects adversely upon the conduct of either officer.

4. FACTUAL BACKGROUND TO THE COMPLAINTS BY MICHAEL AND STEVEN COOPER

At approximately 1:00 a.m. on May 27, 1989, Constable Leach, accompanied by Auxiliary Constable Witmer, was driving a marked police car in an easterly direction along Goldstream Avenue toward the intersection of Goldstream and Millstream Avenues in Langford, British Columbia. The intersection is controlled by a traffic light. When the police car approached the intersection, they observed the traffic light facing them turn from red to green. They also observed a truck complete a left turn off Millstream Avenue in front of the police car and proceed in westerly direction along Goldstream Avenue. There was a conflict in the testimony of the witnesses with respect to the colour of the traffic light when the truck proceeded through the intersection and the precise location of the police car but those conflicts in the testimony are not material to the issues before the Commission.

Constable Leach turned the police car around, activated the police car's emergency lights and pursued the truck. The truck stopped on Goldstream Avenue in front of the Westbrook Mall. The area was well lit from light provided by street lights and the lights of the mall. Constable Leach recognized the driver and the passenger in the truck as being Michael and Steven Cooper respectively although he may not have known their first names at that time. When he bent his head toward the open window of the truck, he smelled the odour of alcohol on the breath of Michael Cooper. Constable Leach advised Michael Cooper that he was under investigation for impaired driving and that he had the right to retain legal counsel. He also gave Michael Cooper the standard police warning that he need not say anything but that anything he did say may given in evidence against him. Constable Leach inquired whether Michael Cooper would voluntarily perform several physical tests to assist Constable Leach in making an assessment of Michael Cooper's sobriety and ability to operate a motor vehicle. Michael Cooper agreed to perform the tests.

While both of the Coopers were still in the truck, Constable Leach instructed Auxiliary Constable Witmer to be careful and to "keep an eye on the son". Steven Cooper got out of the truck and by his own testimony he was "mouthy" and verbally abusive toward both officers while Michael Cooper was performing the sobriety tests under the direction of Constable Leach. At one point during these tests, Constable Leach advised Steven Cooper that he was obstructing an impaired driving investigation and if he continued he would be arrested and charged with obstruction.

After the sobriety tests had been completed, Constable Leach read a breathalyzer demand to Michael Cooper and requested Michael Cooper to get into the rear seat of the police car for the purpose of being transported to the police station for a breathalyzer test. Michael Cooper had cooperated with all the requests and directions of Constable Leach. He had produced his driver's licence and vehicle registration. He had answered all of Constable Leach's questions in a polite and restrained manner. He performed several physical tests that are commonly used as a basis to determine impairment and the ability to operate a motor vehicle. He had emptied his pockets. When Constable Leach made a demand for a breath sample, Michael Cooper accompanied Constable Leach to the rear door of the police car without any resistance.

5. USE OF THE CAROTID CONTROL TECHNIQUE ON MICHAEL COOPER

Michael Cooper's testified that while he was getting into the rear seat of the police car and when he still had one foot on the police car's door sill, he heard his son scream as if he was in pain. He stood up by taking his foot off the car's door sill and placing both feet on the ground. He testified that although Constable Leach was standing behind him while he was getting into the police car, he does not believe that there was any physical contact between himself and Constable Leach when he stood up. As he was standing up, he turned to his left and said something like:

"What the hell is going on?"

Michael Cooper testified that immediately after speaking these words, he was grabbed from behind by Constable Leach who placed both arms around his neck. Constable Leach applied pressure to Michael Cooper's neck and he was rendered unconscious within two seconds. When he regained consciousness, he was lying flat on his back on the pavement.

Constable Leach's testimony on this aspect of the events was remarkably different from that of Michael Cooper. He testified that while Michael Cooper was in the process of getting into the police car, he turned and slammed into Constable Leach with both hands while stating:

"No, you are going to have to choke me out."

Constable Leach testified that Michael Cooper's actions caught him off balance and had the effect of knocking him back several steps. He testified that Michael Cooper walked around the open rear door of the police car and he took three or four steps and possibly as many as five or seven steps toward his truck which was parked in front of the police cruiser. He advised Michael Cooper that he was under arrest for assault and immediately placed his arms around Michael Cooper's neck in the carotid control technique position. Michael Cooper resisted and Constable Leach applied some pressure to the carotid arteries and he gently took Michael Cooper down to a sitting position on pavement. Constable Leach testified that he never fully applied the carotid control technique and that he had only applied pressure to the carotid arteries for about two seconds. He expressed the opinion that he had not applied pressure for a sufficiently long period to cause Michael Cooper to lose consciousness. After Michael Cooper was seated on the pavement, he ceased resisting and Constable Leach released the pressure of the hold on Michael Cooper and went to assist Auxiliary Constable Witmer in relation to Steven Cooper. Constable Leach subsequently observed Michael Cooper lying on his back on the road where he had left him.

Constable Leach gave several reasons for using force on Michael Cooper in the form of the carotid control technique. In examination-in-chief, he testified that his reason for using the carotid control technique was that he wanted to render Michael Cooper "secure" so that he could assist Auxiliary Constable Witmer in arresting Steven Cooper for obstructing an officer and for causing a disturbance. In cross-examination by Mr. Sorochan, he gave a somewhat different but related reason, namely, that he didn't want to end up in a position where he was fighting with Michael Cooper and thereby leaving Auxiliary Constable Witmer in the position of having to restrain Steven Cooper by himself. In cross-examination by Mr. Kelliher, he gave a additional reason, namely, that he was concerned that Michael Cooper was returning to his truck and that he was about to operate his truck in a manner that might endanger the motoring public.

Auxiliary Constable Witmer did not observe Michael Cooper push Constable Leach at any time although he did observe Michael Cooper pushing backwards away from the car door. Auxiliary Constable Witmer did not see Michael Cooper take five or seven steps toward the front of the police car and his truck as Constable Leach testified. He testified that Constable Leach applied the hold to Michael Cooper when he was about one or two steps out from the rear door of the police car.

Steven Cooper testified that Constable Leach applied the neck hold as soon as Michael Cooper stood up as he was in the process of getting into the police car.

6. WERE REASONABLE GROUNDS PRESENT TO JUSTIFY THE USE OF FORCE AND DID THE APPLICATION OF THE CAROTID CONTROL TECHNIQUE CONSTITUTE THE USE OF MORE FORCE THAN WAS NECESSARY?

Section 25 of the Criminal Code provides that if a police officer acts on reasonable grounds, he or she is justified in "using as much force as is necessary" in doing what he is required or authorized to do. In this instance Constable Leach was authorized to take Michael Cooper to the police station for the purpose of obtaining a breath sample in accordance with a lawful demand. The first issue is whether or not Constable Leach had reasonable grounds to use force. If reasonable grounds to use force existed, the second issue is whether the application of the carotid control technique constituted the use of more force than was necessary.

With respect to the first issue, it is necessary to analyse the reasons that Constable Leach gave for using force against Michael Cooper and determine whether they constitute reasonable grounds for the use of force. The one reason that Constable Leach gave was that he was concerned that Michael Cooper was walking to his truck and that he would drive away and become a danger to the public. He testified that Michael Cooper had taken as many as five to seven steps toward his truck before he applied the carotid control technique. There is no evidence that Michael Cooper said or did anything from which it could reasonably be inferred that Michael Cooper intended to drive away his truck as suggested by Constable Leach. The evidence of all of the other witnesses indicates that Constable Leach applied the carotid control technique immediately outside the rear door of the police car and not after Michael Cooper had taken five or seven steps toward his truck. Auxiliary Constable Witmer testified that Constable Leach applied the hold when Constable Leach and Michael Cooper were about one or two steps out from the rear door of the police car. When Corporal German and Constable Orthner arrived, Michael Cooper was already lying on his back on the pavement with Constable Leach standing over him. Corporal German described the position of Michael Cooper on the pavement as being behind the rear door of the police car. Constable Orthner described the position of Michael Cooper as lying on the pavement with his head near the left rear quarter panel of Constable Leach's police car. There is no suggestion by any of the witnesses that Michael Cooper was moved after he was seated on the pavement by Constable Leach. Therefore, the Commission finds that reasonable grounds did not exist to use force for the purpose of preventing Michael Cooper from operating his truck.

Another reason that Constable Leach gave for using the carotid control technique on Michael Cooper was that he wanted to secure Michael Cooper in order that he would be able to assist Auxiliary Constable Witmer with the arrest of Steven Cooper because Auxiliary Constable Witmer was having difficulty with Stephen Cooper. The Commission does not find this reason persuasive for several reasons. Auxiliary Constable Witmer testified that when Constable Leach applied the carotid hold to Michael Cooper, the physical contact between Steven Cooper and Auxiliary Constable Witmer had been limited to Witmer grabbing Steven Cooper's arm with one hand to get his attention and Steven Cooper shoving Witmer away. Indeed, Constable Leach had instructed Auxiliary Constable Witmer not to pursue Steven Cooper until Michael Cooper had been dealt with and Auxiliary Constable Witmer complied with that instruction. In response to a question from a member of the Commission, Auxiliary Constable Witmer testified that he did not need any assistance and he had not requested any assistance. Even if there was a need to assist Auxiliary Constable Witmer, there was nothing to suggest that Constable Leach believed that Michael Cooper would be any problem if Constable Leach left him. Constable Leach himself testified that he did not think that Michael Cooper would interfere with the arrest of Steven Cooper. It is apparent from Constable Leach's own testimony that did he not have any concern about Michael Cooper being either a problem to the officers or a danger to the public because after he applied the carotid hold, he left Michael Cooper sitting on the pavement, without handcuffs, and with the belief that Michael Cooper had never been rendered unconscious. Therefore, the Commission finds that reasonable grounds did not exist to use force on Michael Cooper for the purpose of rendering Michael Cooper secure so that Constable Leach could assist Auxiliary Constable Witmer with Steven Cooper.

If, contrary to the finding of the Commission, Constable Leach did have reasonable grounds for using force on Michael Cooper, the question of whether the use of the carotid control technique constituted the use of more force that was necessary, remains. Michael Cooper had neither done anything nor said anything that could constitute reasonable grounds for a belief that Michael Cooper constituted a danger to the life or safety of Constable Leach or a member of the public. Michael Cooper had co-operated with Constable Leach's investigation and had responded in a respectful manner to the commands of Constable Leach. Even his son was urging him to get into to the police car and take the breathalyzer test to prove that he was not impaired. It was only when he heard his son scream as if he was in pain, that he didn't immediately follow through with Constable Leach's request that he get into the police car.

Constable Leach testified that Michael Cooper uttered words to the effect of "You are going to have to choke me out" and knocked Constable Leach backwards. Auxiliary Constable Witmer also testified that Michael Cooper used such language but he did not see Michael Cooper push Constable Leach. Michael Cooper denied that he uttered those words. Even if he did utter those words, the mere utterance of such words cannot be a justification for the use of the carotid control technique.

Constable Leach's assertions with respect to the physical actions of Michael Cooper are not supported by the testimony of either Auxiliary Constable Witmer or the testimony of Steven Cooper. The Commission finds that if there was any physical contact between Michael Cooper and Constable Leach prior to the application of the carotid control technique, the physical contact was minimal. To the extent that there was any physical contact initiated by Michael Cooper, it was motivated by a genuine concern for the well-being of his son and there was no intention by Michael Cooper to resist the lawful commands of Constable Leach. The words uttered by Michael Cooper combined with the physical actions of Michael Cooper did not constitute a justification for the application of the carotid control technique.

For the purposes of determining whether or not Constable Leach used more force that was necessary toward Michael Cooper, it is not necessary for the Commission to determine whether Michael Cooper was rendered unconscious by the application of the carotid control technique. Michael Cooper testified that he lost consciousness. Constable Leach expressed the belief that Michael Cooper never lost consciousness. When Corporal German and Constable Orthner arrived at the scene, Corporal German observed Constable Leach standing, bent over at waist, looking down at Michael Cooper who was lying on his back on the pavement. When Constable Orthner left his police car and passed by Michael Cooper, the latter's eyes were closed. Constable Orthner candidly admitted that he could not tell whether Michael Cooper was unconscious or not. Nevertheless, the fact that Michael Cooper was lying on the road with his eyes closed when his son was in the midst of an altercation with two police officers seems more consistent with a finding that he had lapsed into at least semi-consciousness if not unconsciousness. Steven Cooper also perceived that his father had lost consciousness. The period of unconsciousness, if it occurred, did not last long because Corporal German observed Michael Cooper, with his eyes open, during the altercation between his son and the other officers.

Michael Cooper is small in stature. He testified that he weighed approximately 145 pounds in May of 1989. He testified that he was 47 years old at the time of the hearing but his physical appearance suggested that he was older. Constable Leach testified that he is six feet tall and weighs two hundred pounds. He appeared to be in fine physical condition. The difference in size and apparent strength suggests that Constable Leach would not have had much physical difficulty in using techniques, other than the carotid hold, to ensure that Michael Cooper complied with his command to get into the police car. When asked by Mr. Sorochan in cross-examination why he had not used another type of come-along technique, Constable Leach answered that he had used the carotid hold before and he had found it to be effective. He agreed with Mr. Sorochan's classification of the carotid hold as being "the hold of first instance". He also acknowledged that he had not been required to practice other compliance techniques on a regular basis. In response to another question about why he did not use other pain compliance and come-along techniques, he responded that he thought that they might not be effective on a person who had been drinking. If, contrary to the finding of the Commission, reasonable grounds did exist for the use of force against Michael Cooper, the use of the carotid control technique constituted the use of more force that was necessary to obtain Michael Cooper's compliance with the commands of Constable Leach.

Mr. Gordon Macdonald, counsel for Constable Leach, submitted that Constable Leach's application of the carotid control technique on Michael Cooper was in accordance with his training by the RCMP and that it should not attract criticism from the Commission. The Commission acknowledges that Constable Leach was taught the use of the carotid hold as a compliance or come-along technique as part of his Basic Recruit Training program. Furthermore, the RCMP Operations Manual at the time of this complaint provided little guidance with respect to the circumstances where it was appropriate to use the carotid control technique. Nevertheless, the Criminal Code only permits a police officer to use force where there are reasonable grounds to justify the use of force and where the force used is no more than is necessary. RCMP members must be expected to exercise reasoned judgment with respect to the type and amount of physical force that is to be used against citizens. The fact that a member has been trained in the use of the carotid hold does not mean that the member may use the hold whenever a citizen does not immediately comply with an officer's command.

FINDINGS:

(H) There is no evidence to support Constable Leach's belief that Michael Cooper was intending to drive away in his truck.

(I) There is no evidence to support Constable Leach's belief that Michael Cooper might interfere with the arrest of Steven Cooper or that it was necessary to render Michael Cooper secure so that Constable Leach could assist Auxiliary Constable Witmer with Steven Cooper.

(J) Reasonable grounds did not exist to use force against Michael Cooper.

(K) If reasonable grounds did exist for the use of force against Michael Cooper, which is contrary to the finding of the Commission, the use of the carotid control technique constituted the use of more force that was necessary.

(L) Constable Leach honestly believed that he could properly apply the carotid control technique without a risk of any dangerous consequences to the person on whom it was applied.

RECOMMENDATION:

8. The Commissioner write to Michael Cooper
   (a) to acknowledge that reasonable grounds did not exist for the application of the carotid control technique to him and to express the regret of the RCMP with respect to the trauma that he suffered from the application of the carotid control technique; and
   (b) to advise him that the RCMP will be conducting a review of its policies and training programs with respect to the use of the carotid control technique and that the review will take into account the findings and recommendations that have been made in this Report.

7. COMPLAINT OF MICHAEL COOPER THAT A RCMP OFFICER PLACED A BOOT ON HIS NECK WHEN HE TRIED TO GET UP

The second allegation in Michael Cooper's complaint is that a RCMP officer placed a boot on the neck of Michael Cooper when the latter attempted to get up after he had been lying on the ground following the application of the carotid hold. There is a direct conflict between the testimony of Michael Cooper and the evidence of the officers who were present. Michael Cooper testified this incident occurred after he regained consciousness following the application of the carotid hold and while he was lying on his back on the pavement. He testified that he raised his head and observed his son Steven struggling with the other officers and that while he had his head up, a boot came on his throat and upper chest and a voice said "lay back down, lay still". He described the boot as a military type black ankle boot. Michael Cooper could not identify either the wearer of the boot or the voice that commanded him to lay back down. He testified that he didn't look up to see who the wearer of the boot was. He testified that he would have recognized the voice of Constable Leach and it was not Constable Leach. In his testimony, Corporal German testified that he was the person who told Michael Cooper to "Lie down and don't move." but Corporal German testified that he only came within about six feet of Michael Cooper when he made that statement and he was in civilian clothes and he was wearing running shoes.

In response to a question from a member of the Commission, Michael Cooper acknowledged that he did not complain to Constable Orthner about this allegation during the period when Constable Orthner was seeking to obtain a sample of Michael Cooper's breath at the Colwood Police Station whereas he did complain about being "choked out".

At the time when this aspect of the complaint allegedly happened, all four of the officers who were present were fully engaged in attempting to subdue Steven Cooper. The Commission does not find it to be credible that a person who had just had a boot placed on his or her throat would not look up and attempt to ascertain the identity of the person. Each of the four officers was asked during their respective testimony whether he had placed any footwear on the neck of Michael Cooper. Each of the four denied this allegation and each testified that he had not observed anybody else place a boot on Michael Cooper's neck. Michael Cooper has withdrawn the complaints against Constables Orthner and Corporal German.

FINDING:

(M) None of the officers placed a boot or other footwear on Michael Cooper's neck or chest and this aspect of Michael Cooper's complaint is not substantiated.

8. COMPLAINTS OF STEVEN COOPER

There are three distinct allegations in the complaints of Steven Cooper. The first alleges that Steven Cooper's face was smashed up and down against the pavement by a RCMP officer. The second alleges that he received blows to his head, ribs, back and left arm. The third alleges that an officer grabbed his windpipe after he had been handcuffed. The first and second allegations pertain to effecting the arrest of Steven Cooper and putting handcuffs on him. These two allegations will be dealt with together. The third allegation pertains to conduct that occurred after Steven Cooper had been handcuffed and was being led to a police car. The third allegation will be dealt with separately.

(a) EFFECTING THE ARREST OF STEVEN COOPER

There are significant conflicts in the testimony of the various witnesses with respect to what happened after Steven Cooper lunged at Constable Leach. No useful purpose would be served by reiterating the testimony of each witness. The Commission was impressed with the testimony of Corporal German and Constable Orthner. Counsel for Stephen and Michael Cooper, Mr. Kelliher, in his argument, paid tribute to testimony of Corporal German and Constable Orthner as being frank, disinterested and not materially different from that of the Coopers. The Commission was also impressed with the candid manner in which Mr. Witmer gave his evidence. He was not a party to these proceedings. He resigned as an Auxiliary Constable several months after this incident and he has not had any further association with the RCMP. He had nothing to gain or lose by reason of his testimony. On several occasions he could have testified in a manner that was more favourable to himself but he did not do so. Consequently, the Commission has examined the testimony of all of the witnesses and has made findings of fact as to what occurred. Where there have been conflicts in the testimony of witnesses, the Commission has preferred the testimony given by Corporal German, Constable Orthner and Mr. Witmer.

Steven Cooper testified that when he observed Constable Leach applying the carotid hold to his father, Michael Cooper, and when he observed his father being taken to the pavement in what he perceived to be an unconscious state, he became particularly concerned about the health of his father because his father had previously experienced some heart problems. Steven Cooper lunged at Constable Leach. Steven Cooper, by his testimony, stands 5 foot 10 3/4 inches, weighs about 180 pounds and is in good physical condition. Auxiliary Constable

Witmer grabbed Steven Cooper from behind but Steven spun out of his grip and turned back toward Constable Leach who advised Steven that he was under arrest for obstruction. Steven lunged at Constable Leach again. Witmer grabbed Steven again and used his right arm to place Steven in a headlock with Witmer's left hand gripping Steven's shoulder. They began to stumble. Mr. Witmer testified that he decided to take Steven to the ground and that he landed on top of Steven. Steven continued to try and break free. Auxiliary Constable Witmer decided to try to get his right arm down around Steven's neck in order to apply the carotid control technique. Mr. Witmer testified that he used as much effort as he could but he was unsuccessful in applying the carotid control hold on Steven Cooper. After Corporal German and Constable Orthner arrived, Corporal German observed that Constables Leach and Witmer were not gaining control of Steven Cooper, who was fighting wildly and who appeared to be trying to stand up. Corporal German grabbed both of Steven Cooper's legs but had no success in controlling them. Constable Orthner was able to place a handcuff on Steven Cooper's left wrist. Steven's right arm was pinned underneath his body. In order to get Steven's right arm out from under his body it was necessary for Auxiliary Constable Witmer to extricate his arm from being around Steven Cooper's head. To accomplish this, Constable Leach took control of Steven's head by grasping his hair. Steven Cooper testified that Constable Leach started "smashing" his face into the ground repeatedly. Under cross-examination by Mr. Kelliher, Auxiliary Constable Witmer testified:

Q. "Did you see Officer Leach take him by the hair and strike his head against the pavement?"

A. "After he, when he took his head by the hair and my arm was still wrapped around his head he lifted Steven Cooper's head as it was pressing against my arm against the road and he lifted it up, I pulled my arm, and then he pushed his head down onto the roadway to hold him in place."

Mr. Witmer testified that after he got his arm out from around Steven's head he was able to get Steven's right arm out from underneath him and the handcuffs were affixed to both of Steven's wrists.

The second aspect of Steven Cooper's complaint pertains to blows that he allegedly received to his head, ribs, back and left arm while he was grappling with the officers. Steven Cooper testified that he had been punched or kicked in the ribs during scuffle but he couldn't see the face of the person who inflicted the blows he was unable to identify his assailant. In his testimony, he did not mention any blows to his back or left arm.

Michael Cooper testified that, after he regained consciousness and while he was lying on the pavement, he raised his head up, looked over his body and saw his son lying on his stomach and

> "...at least one set of knees going up and down into his side and back..."

but Michael Cooper was unable to identify whose knees they were. The Commission has difficulty accepting Michael Cooper's testimony on this point because by his own testimony he was lying on the pavement, parallel to Constable Leach's police car with his feet toward his truck which was parked in front of the police car. His line of sight would have been toward the front of Constable Leach's police car whereas the evidence of all of the other witnesses is that Steven Cooper was at the rear of Constable Leach's police car. Therefore it would have been very difficult for Michael Cooper to have seen much of what was happening with respect to his son by looking over his body in the manner that he described. Michael Cooper also testified that these events occurred after his son had been handcuffed whereas the evidence of both Corporal German and Constable Orthner is that as soon as both handcuffs were secured on Steven's wrists, the altercation ceased.

It is clear that Steven Cooper sustained several injuries during this incident. He was taken to the Emergency Department of the Victoria General Hospital at approximately 2:15 a.m. on the morning of May 27, 1989, where he was examined by Dr. Peter I. Beliveau. Dr. Beliveau testified with respect to his observations. He observed two large red areas on the right cheek of Steven Cooper which he described as abrasions. He observed red areas on the underneath part of his chin and on the front and right side of his throat which he described as being contusions and bruising. His examination did not reveal any visible bruises in the rib area but Dr. Beliveau testified that Steven exhibited "some tenderness" over his right lateral rib area, about mid-position. Dr. Beliveau did not report any bruising or tenderness in relation to Steven Cooper's back. Dr. Beliveau testified that because of the extent of the bruising and limitation of movement that Steven Cooper experienced in his neck, he ordered cervical and thoracic spine X-rays as well as a chest X-ray. The X-ray Report, which was filed as part of Exhibit #65, states that the x-rays did not reveal any acute bone or joint abnormality and that the heart was not enlarged and that the lungs were clear. Steven

Cooper was discharged from the hospital at 3:30 a.m. on May 27, 1989.

Allyson Cooper, the wife of Steven Cooper, took several photographs of her husband in the hours following the actions which are the subject of his complaint. These were admitted as Exhibit 66. Photographs numbered 1, 2 and 3 were taken at Emergency Department of the Victoria General Hospital. Photographs numbered 4 - 15 were taken later in the morning of May 27, 1989 after Steven Cooper had been released from custody. The photographs depict the condition of Steven Cooper's face and the front of his neck.

Steven Cooper was examined two days after the incident by his family doctor, Dr. Brian Spencer. He testified that Steven Cooper had complained to him that his lower back and neck were uncomfortable.

Only four RCMP officers were present. Steven Cooper has withdrawn his complaint against Constable Orthner and Corporal German and in doing so instructed his counsel that he believed that Corporal German and Constable Orthner had carried out their duties in accordance with the highest standards of the RCMP. It is unnecessary to consider their conduct any farther. Nevertheless, the Commission has found that there was no evidence of any improper conduct by these officers. Corporal German was fully engaged in trying to restrain Steven's legs. Constable Orthner was attempting to place handcuffs on Steven's wrists. Constable Orthner did place his knee in the middle of Steven Cooper's back in order to hold the left arm in place while trying to get the handcuffs on Steven Cooper's right wrist. There was nothing improper in any of the actions by Corporal German or Constable Orthner.

There is undisputed evidence that Auxiliary Constable Witmer was on top of Steven Cooper with his right arm around Steven Cooper's head and that he was trying to apply a carotid hold which would require both arms. Therefore it is extremely unlikely that he would have been in a position to inflict any blows with his hands to the ribs of Steven Cooper. According to Steven Cooper's own testimony, Constable Leach was holding on to Steven's hair. It would have been difficult for Constable Leach to inflict blows with his knees to the Steven Cooper's ribs while holding on to Steven's hair.

Section 25 of the Criminal Code provides that police officers are justified in using as much force as is necessary to effect an arrest. Steven Cooper was struggling violently in his efforts to resist arrest.

The injuries to Steven Cooper's cheek, chin, arms and back are consistent with the application of only the force that was necessary to effect his arrest. The injuries to his cheek are consistent with the headlock applied by Auxiliary Constable Witmer and Witmer's falling to the ground on top of Steven Cooper during the struggle. The bruise on Steven Cooper's chin is consistent with the unsuccessful attempt by Auxiliary Constable Witmer to change his headlock to the carotid control technique.

Constable Leach's actions in assisting the other officers with the arrest of Steven Cooper have given the Commission a serious concern. Auxiliary Constable Witmer was in the best position to observe Constable Leach's actions in relation to Steven Cooper's head. Auxiliary Constable Witmer testified that while he was removing his right arm from being around Steven Cooper's neck, Constable Leach held Steven Cooper's head by the hair and "he pushed his head down onto the roadway to hold him in place." It is likely that Steven suffered one of the bruises on his cheek at that time. If there had been a repeated smashing of Steven's head into the pavement, as alleged in the complaint, it is likely that there would have been more extensive bruising. There is a fine line between "pushing" Steven's head down onto the pavement and "smashing" his head down onto hard pavement. The latter would constitute the use of more force that was necessary to effect the arrest. Constable Leach must take greater care to minimize the risk of injury to citizens who are being apprehended if he wishes to avoid crossing that line.

FINDINGS:

(N) **Prior to any injuries being sustained by Steven Cooper, he had been advised by Constable Leach that he was under arrest for obstruction.**

(O) **The force that caused the abrasion and bruises to Steven Cooper's cheek, chin and arm and which caused the tenderness in his ribs did not exceed the force that was necessary to effect to an arrest and subdue Steven Cooper who was struggling violently and resisting a lawful arrest.**

(P) **The complaint that a RCMP officer punched or kicked Steven Cooper in the back is unsupported by credible evidence.**

(Q) **The force used by Auxiliary Constable Witmer, Corporal German and Constable Orthner did not exceed the force that was necessary to effect the**

arrest of Steven Cooper. Each of these officers carried out his duties, with respect to the incident in accordance with the highest standards of the RCMP and there is no evidence that reflects adversely upon the conduct of any of these officers.

(R) The actions of Constable Leach in holding Steven Cooper's head by the hair and holding his head against the pavement while attempting to effect the arrest of Steven Cooper did not constitute the use of more force than was necessary in these circumstances.

(b) GRASPING STEVEN COOPER BY THE THROAT AFTER HIS ARREST

After Steven Cooper had been subdued and placed in handcuffs, he was raised to his feet and taken to Constable Orthner's police car. There is a conflict in the evidence with respect to the manner in which this was done. Steven Cooper testified after he was raised to his feet he was dragged several steps backwards toward a police car. When he reached the police car, somebody opened the door and then Constable Leach grabbed him by the throat and squeezed very hard and said: "Let's see how tough you are, you scumbag." and this caused Steven to pass out. When he regained consciousness he was in the back seat of the police car.

Constable Leach testified that while Steven Cooper was sitting on the pavement in handcuffs, Constable Leach cupped his hand under Steven Cooper's jaw and with his other hand on the back of his head, he lifted Steven Cooper to his feet with Constable German's assistance. When Steven Cooper was on his feet, Constable Leach placed his open hand on the front of Steven Cooper's throat and pushed Steven Cooper backwards toward Constable Orthner's police car. Steven Cooper was resisting and twisting. As Steven Cooper turned, Constable Leach used his right hand against Steven Cooper's lower neck in an effort to keep him off balance. Constable Leach denied gripping Steven Cooper's throat and testified that he used the open palm of his hand to effect the manoeuvres described above.

Constable Orthner testified that after Steven Cooper had been handcuffed and placed in a sitting position, he was raised to his feet by Constable Leach in the following manner:

> "Well to my recollection, it was Constable Leach that reached down and grabbed him by the hair and

> "Well to my recollection, it was Constable Leach that reached down and grabbed him by the hair and put his hand in the fashion we've already heard, around his neck like this and lifted him up. And Corporal German was on his right side at that time."

Constable Orthner testified that after Steven Cooper was raised to his feet, he was escorted to a police vehicle in the following manner:

> "He was walked over by Corporal German and Constable Leach who maintained that grip on him...."

Corporal German testified that it was he who assisted Steven to his feet after he had been handcuffed by lifting on the bicep of his left arm. While Corporal German was guiding him, Steven turned back to where the struggle had taken place and turned into Constable Leach but Corporal German was still able to retain his grip on Steven. Corporal German testified as follows:

> "He turned into Constable Leach and Constable Leach at that time, I observed to put a hand up to Steven Cooper's throat, neck area, an open hand, gripped hold of his neck and his other hand he held on to Steven Cooper's hair, sort of at the top at the back of his head and pushed him back toward the police car."

When Constable Leach placed his hand around the front of Steven Cooper's throat, Steven Cooper was in handcuffs and he was still within the grasp and control of Corporal German. Several other officers were also present to provide assistance if it became necessary.

The red marks on the either side of Steven Cooper's throat that are depicted in the photographs in Exhibit #66 are consistent with the application of a significant amount of force by the fingers and thumb of Constable Leach's hand. It is also difficult to explain how Steven could otherwise have sustained those injuries because the evidence is that during the struggle with Auxiliary Constable Witmer, Steven kept his chin tucked to his chest to prevent Witmer from applying a carotid control technique. This manoeuvre by Steven Cooper would protect the throat from bruising during that struggle.

FINDINGS:

(S) While Steven Cooper was in handcuffs, Constable Leach lifted Steven Cooper from a sitting position to his feet by grasping his head and hair.

(T) After Steven Cooper was on his feet, Constable

Leach placed his hand around the front of Steven Cooper's throat and used this hand to push back on Steven Cooper's throat for the purpose of manoeuvring him to a police car.

(U) After Steven Cooper had been placed in handcuffs, there was no justification for Constable Leach either lifting Steven Cooper by the head or hair or placing his hand around the front of Steven Cooper's throat and pushing back on the throat for the purpose of manoeuvring him to a police car.

RECOMMENDATION:

9. The Commissioner write to Steven Cooper to inform him that the policies of the RCMP do not condone lifting a prisoner by the head or hair from a sitting position to his feet when the prisoner is not resisting officers in the execution of their duty.

10. The Commissioner direct Constable Leach to apologize to Steven Cooper by means of a letter for
  (i) lifting Stephen Cooper by the head or hair from a sitting position to his feet; and
  (ii) placing his hand around the front of Stephen Cooper's throat and using his hand to push back on the throat for the purpose of manoeuvring him to the police car.

PART V: OTHER MATTERS

1. CONDUCT OF INTERNAL INVESTIGATIONS

With respect to both the Halliday and Cooper complaints the internal investigation was conducted by another member of the same detachment. This places the member assigned to the conduct the internal investigation in a very difficult position. He or she is being ordered to investigate a member with whom the investigator often works with on a daily basis. In the course of their regular police duties that are unrelated to the complaint, the life of the investigator may depend on the conduct and reaction of the member being investigated.

With respect to both the Halliday and Cooper complaints, the officer who conducted the internal investigation did not speak to the complainant prior to making his recommendation. With respect to the Halliday complaint, the internal investigation was conducted by Corporal Bouwman. He based his recommendation on the written statements that had been taken by Corporal Shoesmith and his discussion with Constable Macdonald. He only spoke to the complainant for the purpose of getting her to sign the Form 1442 complaint form. In some cases the complainant may not want to discuss that matter any further, particularly where the complainant has already given a comprehensive statement to an officer conducting a criminal investigation. In most cases, nothing will be lost and perhaps much to be gained, if the investigator speaks directly to the complainant. The printed page does not always convey the tone or spirit of the complaint.

RECOMMENDATIONS:

11. **Internal investigations should, where possible, be conducted by an officer from another detachment.**

12. **Internal investigators, as a matter of policy, should contact the complainant and at least ascertain whether the complainant wishes to discuss the matter with the investigator.**

2. PRODUCTION OF EVIDENCE BY THE RCMP TO THE PCC

In both the Halliday and Cooper Hearings, it became apparent that the notes made by an officer who was the subject of the complaint, had not been produced to the Public Complaints Commission prior the hearing. Constable Leach testified that nobody had requested him to provide a copy of his notes. Consequently, other counsel did not have copies of his notes and it was necessary to grant an adjournment in order to provide counsel, who was cross-examining Constable Leach, with an opportunity to review the notes and prepare his cross-examination on the notes. Mr. Sorochan, ad hoc counsel to the Commission informed the Commission Panel that a letter had been sent to the RCMP specifically requesting the notes of all officers who were involved these complaints. Ms. Brucker, counsel for the appropriate officer advised the Commission Panel that she had not been provided with copies of Constable Leach's notes.

RECOMMENDATION

13. **Whenever a complaint has been filed with the Public Complaints Commission, copies of the notebooks of all of the officers who have been involved with the subject matter of the complaint shall be produced to the Public Complaints Commission.**

3. EVIDENTIAL MATTERS

During the course of the hearing into the complaints of Michael and Steven Cooper, several matters came to the attention of the Commission with respect to the manner in which evidence had been gathered by or on behalf of parties to the hearings.

(a) ACCESS TO EVIDENCE IN THE POSSESSION OF THE RCMP

Constable Leach, who is a party in the hearing into the complaints of Michael and Steven Cooper, obtained a CPIC computer report with respect to Michael Cooper. The CPIC report was obtained by Constable Leach after the complaint had been lodged against him by Michael Cooper. He obtained it while he was off duty for the purpose of using it in the hearings into Michael Cooper's complaint. He did not obtain the CPIC report for the purpose of any investigation that he was conducting in relation to offences that may have been committed by Michael Cooper.

It is not proper for RCMP members, who have been named in a citizen's complaint, to use their position as RCMP members to gain access to information or obtain evidence that is held by the RCMP where the purpose of obtaining the information or evidence is to use it for the purpose of responding to a citizen's complaint. If information or evidence, which is in the possession of the RCMP, is relevant to a RCMP member's response to a citizen's complaint, the RCMP should forward the information or evidence to the Public Complaints Commission as part of the "relevant materials" pursuant to section 45 (4)(1)(ii)(b) of the Act. If the complaint proceeds to a hearing, counsel to the Commission will provide copies of all relevant evidence to counsel representing the parties. If an RCMP member, who is named in a complaint, is aware of relevant information or evidence that has not been forwarded by the RCMP to the Public Complaints Commission as part of the "relevant materials", the RCMP member or legal counsel for the RCMP member should notify the Public Complaints Commission or counsel for the Commission and the Commission will demand production of the information or evidence.

(b) EVIDENCE IN THE POSSESSION OF NON-PARTIES

The other evidential matter involved a file that was obtained from the Victoria City Police Department shortly after the Notice of Public Hearing was issued with respect to the complaint of Michael Cooper. It was brought to the attention of the Commission that Staff Sergeant McComb, acting upon the request of legal counsel for one of the officers named in complaint of Michael Cooper, requested the Victoria City Police Department to send him a file that the Victoria City Police Department had on Michael Cooper. This file was not requested as part of any investigation that was being conducted by the RCMP in relation to offences that may have been committed by Michael Cooper but rather it was obtained solely for the purpose of responding to the complaint that had been filed by Michael Cooper. Staff Sergeant McComb acknowledged that it was a confidential file of the Victoria City Police Department and that it was unlikely that the Victoria City Police Department would provide a confidential file to anyone other than another police force. In fairness to Staff Sergeant McComb, it must be acknowledged that he also provided copies of this file to legal counsel for the appropriate officer who in turn provided copies to counsel for the Commission and counsel for Michael Cooper. Furthermore, he stated that now that he is more familiar with the procedures of the Public Complaints Commission, he would refer any similar requests for information to the Public Complaints Commission.

The contents of the file were not tendered in evidence and the Commission has no knowledge of the content of the file.

It was also brought to the attention of the Commission that Constable Leach, acting on information received from a member of the Victoria City Police Department, placed a telephone call to the Eric Martin Institute. He obtained the name of psychiatrist as a consequence of that call. Again, it appears Constable Leach may have been using his position as an RCMP officer to obtain information, not as part of any ongoing RCMP police investigation but rather in relation to the citizen complaints that had been made against him.

It is not proper for RCMP members, who have been named in a citizen's complaint, to use their position or their powers as police officers to obtain evidence that a member of the general public could not obtain. If an individual person, corporation or institution has evidence that may be relevant to a citizen's complaint that has been filed pursuant to the public complaints process of the Act, any party to a hearing may request the Commission to issue a Summons to Produce directed to the person who is in the possession of the evidence. If there is a claim that the information is privileged, as may have been the case in this instance, the claim of privilege may be dealt with by means of a pre-hearing determination. If this practice is followed, all the relevant and admissible evidence will be before the Commission.

RECOMMENDATION:

14. The RCMP take steps to inform its members that it is improper for RCMP members, who have been named in a citizen's complaint, to use their position as RCMP members to gain access to information or

evidence to which members of the general public do not have access, where the purpose is to use the information or evidence to respond to the citizen's complaint.

PART VI: SUMMARY OF RECOMMENDATIONS

It is not the Commission's purpose or function under Part VII of the Royal Canadian Mounted Police Act, 1986 to determine criminal responsibility or assess civil liability in connection with incidents that gave rise to complaints that have been the subject of these hearings. In addition, it must be noted that disciplinary action, if it should be warranted, falls outside Part VII of the Act. The mandate of the Commission is to hear and inquire into allegations contained in a complaint and to prepare a report that makes findings and recommendations with respect to the complaints. This report is sent to the Commissioner of the RCMP and the Solicitor General of Canada. The purpose of the report is to make findings with respect to the facts that gave rise to the complaint and, where the complaint is well-founded, to make recommendations that are designed to provide the complainant with a measure of satisfaction and to assist the RCMP in improving its competence.

RECOMMENDATIONS:

1. **The RCMP consider the development and provision of in-service training programs in the use of compliance techniques and come-along holds including the carotid hold for officers who are expected to operate in the field. These programs should be provided at regular intervals and should include an evaluation of an officer's skills, retraining where required, and instruction with respect to new information and techniques.**

2. **RCMP Training staff should be encouraged to develop their knowledge and skills, which are related to their training responsibilities, by attending seminars, and training programs, and reading current literature and journals. In particular, they should be encouraged to attend programs where representatives of other police organizations are making presentations.**

3. **The RCMP consider the development and use of a form on which any use of the carotid control technique will be recorded and which will enable the commanding officer of each detachment to**

periodically review the use of the carotid control technique by RCMP members of the detachment.

4. The RCMP should review the growing body of knowledge with respect to the physiological and medical effects of applying the carotid control technique, the policies and training manuals that have been developed by other police forces and law enforcement agencies and the concerns expressed by courts and other commissions of inquiry and revise and develop its policies and training programs with respect to the use of the carotid control technique having particular regard to
   (a) its use when RCMP policy otherwise authorizes the use of lethal force.

   (b) the safety of the officer or other persons who may be in danger by reason of the conduct of the person on whom it is proposed to use the carotid control technique;

   (c) the availability and suitability of other methods of effecting an arrest or achieving compliance with the lawful commands of an officer that less potential to cause harm; and

   (d) not using the carotid control technique either a as method of merely controlling an uncooperative suspect or as a come-along technique where less dangerous means of accomplishing the RCMP member's objective may be used.

5. The RCMP consider reintroducing its policy with respect to the use or application of the carotid control technique and any revisions of this policy into the RCMP Operations Manual or other document where it will be readily available to all members of the RCMP.

6. RCMP Members should be advised of the potentially dangerous consequences that may occur even from a proper application of the carotid control technique.

7. The self-defence component of the Recruit Training Program be reviewed and, if advisable, revised having regard to the factors enumerated in Recommendation Four.

8. The Commissioner write to Michael Cooper
   (a) to acknowledge that reasonable grounds did

not exist for the application of the carotid control technique to him and to express the regret of the RCMP with respect to the trauma that he suffered from the application of the carotid control technique; and

(b) to advise him that the RCMP will be conducting a review of its policies and training programs with respect to the use of the carotid control technique and that the review will take into account the findings and recommendations that have been made in this Report.

9. The Commissioner write to Steven Cooper to inform him that the policies of the RCMP do not condone lifting a prisoner by the head or hair from a sitting position to his feet when the prisoner is not resisting officers in the execution of their duty.

10. The Commissioner direct Constable Leach to apologize to Steven Cooper by means of a letter for
    (i) lifting Stephen Cooper by the head or hair from a sitting position to his feet; and
    (ii) placing his hand around the front of Stephen Cooper's throat and using his hand to push back on the throat for the purpose of manoeuvring him to the police car.

11. Internal investigations should, where possible, be conducted by an officer from another detachment.

12. Internal investigators, as a matter of policy, should contact the complainant and at least ascertain whether the complainant wishes to discuss the matter with the investigator.

13. Whenever a complaint has been filed with the Public Complaints Commission, copies of the notebooks of all of the officers who have been involved with the subject matter of the complaint shall be produced to the Public Complaints Commission.

14. The RCMP take steps to inform its members that it is improper for RCMP members, who have been named in a citizen's complaint, to use their position as RCMP members to gain access to information or evidence to which members of the general public do not have access, where the purpose is to use the information or evidence to respond to the citizen's complaint.

15. The RCMP inform the Commission of all measures that are taken in response to this Report in order the Commission Chairman may prepare the Commission's annual report in accordance with section 45.34 of the Act.

APPENDIX B

Royal Canadian Mounted Police
Gendarmerie royale du Canada

N.D. Inkster
Commissioner Le Commissaire

January 30, 1992

Mr. Fernand Simard
Acting Chairman
RCMP Public Complaints Commission
P.O. Box 3423
Postal Station "D"
Ottawa, Ontario
K1P 6L4

Dear Mr. Simard:

In response to the Commission report and transcripts relating to the public complaints of Michael and Steven Cooper of Victoria, British Columbia, references 2000-PCC-89557/89558 and 89G-2965/3303, the following constitutes notice of any further action that will be taken in accordance with subsection 45.46(2) of the RCMP Act.

I note the Commission received a great deal of evidence concerning the carotid control technique and as a consequence made a number of findings and recommendations relating to RCMP policies, procedures and training programs. In accordance with subsection 5(1) of the RCMP Act, the Commissioner of the RCMP, under direction of the Minister, has the control and management of the Force and all matters connected therewith. Therefore, I will take these findings and recommendations under advisement. They will be examined and reviewed as an internal matter by policy sections of the various RCMP Directorates. The results will then be forwarded to the Minister in my annual Accountability Report.

In respect of findings (B) and (F), they are viewed as observations rather than findings. Findings (A) (C), (D) and (E), along with Recommendations (1), (2), (3) and (4), are not directly related to the resolution of the complaint and, as a result, I take them under advisement. I will instruct the Director of Training to examine and review them as an internal matter.

1200 Vanier Parkway
Ottawa, Ontario
K1A 0R2

1200, promenade Vanier
Ottawa (Ontario)
K1A 0R2

I share your finding (G), that based on the evidence presented, there is no proof that reflects adversely upon the conduct of Cpl. R.W. German and Cst. D.A. Orthner with respect to matters related to the complaints by Michael and Steven Cooper.

With regards to complaint allegations of Michael Cooper, I accept findings (H), (I), (J), (K) and (L) in that the findings do not contradict the evidence presented at the Hearing. I accept Recommendation #8 (a) and (b) and will instruct the Commanding Officer, "E" Division to write to Michael Cooper explaining that reasonable justification did not exist for the application of the carotid hold to him and express regret on behalf of the Force. Michael Cooper will also be advised that the Director of Training will be reviewing and examining RCMP policies and training programs relating to the carotid control technique.

I accept finding (M). There is no credible evidence to support the allegation that a member placed a boot on Michael Cooper's neck. I note that at the time when this aspect of the complaint allegedly took place, all four of the members were fully occupied in trying to subdue Steven Cooper.

With regards to the allegations in the complaint of Steven Cooper, I share your findings (N), (M), (O), (P), (Q) and (R), that based on testimony by Dr. Peter I. Beliveau of the Victoria General Hospital and the evidence presented by the four members, the injuries to Steven Cooper's cheek, arms and back are consistent with the use of force. I also agree that the use of force did not exceed that which was necessary to effect the arrest of Steven Cooper.

With respect to the allegation that after Steven Cooper had been subdued and placed in handcuffs, Cst. W.S. Leach grasped him by the throat and hair, I accept findings (S), (T) and (U). I, therefore, accept Recommendations #9 and #10 and I will instruct the Commanding Officer, "E" Division to extend a written apology to Steven Cooper and inform him that RCMP policies do not condone such behaviour. In addition, Cst. Leach will be encouraged to write a letter of apology to Steven Cooper, however, this must be left to his discretion as an ordered apology is meaningless.

I note the conduct of internal investigations, the production of evidence and evidential matters are addressed, resulting in Recommendations #11, #12, #13 and #14. I take these recommendations under advisement. In this regard, I will instruct the Director of Personnel to review and examine them internally.

In order to ensure that matters addressed in this notice are given full and proper consideration, I will personally monitor their ultimate resolution.

I thank you for the advice and I look forward to receiving your final report.

Sincerely,

N.D. Inkster